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English Constitution

WITH  
Respect to the Sovereign Authority  
of the PRINCE,

A N D

The Allegiance of the SUBJECT.

By way of R E P L Y to the several  
Answers that have been made to it.

By WILLIAM HIGDEN, D.D.

London, Printed for S. Keble at the *Turks-Head*,  
and R. Gosling at the *Miter* in *Fleetstreet*. 1710.

DEFENCE  
OF THE  
VIEW  
OF THE  
English Constitution



AND  
The Alliance of the SUBJECT  
By way of REFPLY to the several  
Answers that have been made to it.

By WILLIAM HODGKIN, D.D.

London, Printed for S. Knap at the Trenchard-Head,  
and R. Gifford at the Middle Temple, 1710.



## The PREFACE.

**T**O reduce this Controversy to Matter of Fact, was, I thought, the Way to bring it to a short and a fair Issue. For, that it has been the Common Usage of the Realm, for all Orders and Degrees of Men after Revolutions to submit to the Princes that were possess'd of the Throne with the Consent of the States : That the Authority of these Kings, to which the Subjects submitted, swore, and paid Allegiance, was owned in the succeeding Reigns of the Kings who were their Rivals : That the Judicial Proceedings, and adjudged Cases in the Courts of Kings *de jure*, which do fully acknowledge that *Authority*, are extant in the *Year Books* of those Reigns : That the solemn Resolutions, and declared Opinions of Judges, and great Lawyers, both ancient, and modern, which I have produced for this Authority, were really delivered by those Judges and Lawyers : That all the publick

The PREFACE.

Statutes, which were made by Kings *de facto*, have ever had the Force of Laws of this Realm, have been always pleaded as such in the Courts of succeeding Kings that were their Rivals, without any Confirmation, or pretended Confirmation, and have been recited as such by Kings *de jure* and their Parliaments: That when the 25 *Ed. III.* was made, as well as in all times before that Statute, by the Common Custom and Usage of the Realm, the Unpossess'd, Unrecognized Heir was never stiled and held to be our Sovereign Lord the King by any: That the Prince in possession of the Crown and Kingdom was always stiled and held to be our Sovereign Lord the King: That in the 11 Year of *Henry VII.* a Statute was made, which declares that to serve the King for the Time being is the true Duty and Service of Allegiance, and secures the Subjects in the Discharge of that Service; and that this Law has never been Repealed by any succeeding King or Queen,

## The PREFACE.

Queen, but stands, at this day in the *Statute Book*, a Law of this Realm: Are all Matters of Fact.

Now there is but one way to answer Matters of Fact, which is to deny them. And tho' these Authors have attempted this in an instance or two, yet they have done it so faintly and unsuccessfully, and the Evidence against them is so clear and full; that instead of roundly denying these Facts, they have had recourse to the *Salvos* of *sub ratione juris*, and the *Presumptive Consent*, &c. with which (tho' they have not the least Authority for either from our Lawyers or Lawbooks) they think to turn off the force of what has been urged both from the Common Laws and the Statute Book. But this is not answering, but evading, 'tis setting up their private Opinions against Fact and Law, or laying the Laws aside, and setting an Hypothesis in their Place.

It is certain, that the Schemes of Government which have been form'd by

## The P R E F A C E.

some Men of leisure, are perfect Strangers to our Laws. Laws are Rules given by the Supreme Authority, obliging the Subjects to regulate their Actions by them, in order to the Publick Peace and Tranquility of the Realm; without any regard to the Patriarchal, or Popular Scheme. And therefore to such as dictate from either of these Schemes, that Maxim of Law is a sufficient Answer, *Lex non dicit, neque tu dicere debes.*

Some, I know, doubt, whether Human Laws are sufficient to justify our Actions in *foro interno*, and to satisfy Conscience. But they are to consider, that Conscience is to be directed by some Rule. In Matters of Faith, and Divine Institutions, Divine Revelation is our Rule; In Ecclesiastical Matters, as distinguished from Divine Institutions, the Laws of the Church; In Civil Matters, the Laws of the State, so long as they enjoin nothing contrary to the Law of God: If they



## The P R E F A C E.

do, we have a plain Apostolical Rule,  
*To obey God rather than Man*; If they do  
not, we have another Apostolical Rule,  
as plain, *To obey Magistrates*.

God has given no particular Laws in  
Civil Affairs as to the Form of Govern-  
ment, or the Measures of Obedience,  
except it were to the Jewish Nation.  
Neither has the Revelation of the Go-  
spel made any Alteration in this Matter.  
We are therein, I say, commanded in ge-  
neral *To obey Magistrates*, &c. but are  
left to learn from the Laws of every  
Country, who the Magistrate is, and  
what Obedience is due to him. Our  
Blessed Lord himself submitted to the  
Government under which he lived, and  
made no Change in the Governments  
of the World, but left them in the  
same State in which he found them His  
Apostles, and their Successors after them  
did the same, whether they propagated  
the Gospel within, or without the Li-  
mits of the Roman Empire. The Ad-  
vantage which Divine Revelation has

## The P R E F A C E.

brought to Government, and the Security it gives to the Thrones of Princes, is not by altering the Object, or the Measures of Civil Obedience, but by Establishing that Obedience, which human Laws exact for fear of Punishment, on a higher and a surer Principle, and with a more weighty and awful Sanction, than they can give ; whilst it obliges us to *be Subject, not only for Wrath, but also for Conscience Sake.* Could it be proved that a particular Model of Government and Rule of Succession to it, hath been Instituted by God as a Law to Mankind, I should think my self not only obliged to Submit to it, but obliged to Submit to no other ; since no humane Authority can prescribe against a Divine Institution : But till that is proved, I shall think my self obliged to submit to *every Ordinance of Men*, or, as it may be rendred, to *every Human Constitution, for the Lord's sake*, and to make the Laws of my Country, the Rule of my Obedience in Civil Matters.

It

## The PREFACE.

It has been objected that the Act of the 13 *Eliz.* c. 1. is expired. If that were true; it is never the less true, that the Legislature of the Realm hath in that Act asserted the Limitation of the Descent and Inheritance of the Crown to be within the Verge of its Power. But it is not true that the Act 13 *Eliz.* c. 1. is expired: The Penalty of High Treason indeed was Temporary, that Act making it High Treason, only during the Queen's Life, for any one to affirm that the Queen and her Two Houses of Parliament could not make Laws of sufficient Force and Validity to bind the Descent and Inheritance of the Crown. But the Act it self was so far from being Temporary, or expiring with the Queen's life, that it expressly makes it forfeiture of Goods and Chattels, for any one to affirm the same after the Queen's Death. \*

After I have proved the Legislative Authority of the King for the time being, with his two Houses of Parlia-

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\* See Number V. in the Appendix.

ment :

## The PREFACE.

ment: I think, I need say no more of the Hereditary Descent of the Crown being limitable by Act of Parliament, which is the principal Question betwixt me and these Authors on this Head. Not whether the Crown is Hereditary? For that it is so, is agreed on both Hands: And the aforesaid Act is so far from making it Elective, that it plainly acknowledges the Inheritance of the Crown, whilst it asserts that its *Inheritance may be limited by Parliament*; nay the Act † expressly makes it equally penal, for any to affirm or maintain that the Common Laws of this Realm, not altered by Parliament, ought not to direct the Right of the Crown of England, as to affirm that the Queen and her two Houses of Parliament could not limit the Descent and Inheritance thereof. \*

And therefore the Question betwixt these Authors and me is, whether the Hereditary Right and Descent of the

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\* See the beginning of the Clause of the Act Numb. V.



## The P R E F A C E.

Crown is indefeazible and unalienable ? as they affirm : Or under the Direction of the Legislative Power ? as I have not only affirmed, but I think, fully proved.

Having referr'd in p. 7. to *Lethington* the Scotch Secretary's Letter, and to Sir *Thomas Craig's* Book of *the Right of Succession*, for farther Proof that *Henry VIII.* did not execute the Power given him by Parliament, to nominate a Successor by his last Will and Testament, Signed with his own Hand, I have thought fit to Print a Citation from each of them in the *Appendix*. \*

What *Lethington* says, carries the greater Weight, because he appeals for the Truth of it, not only to Sir *William Cecil*, the Minister of State to whom he writes, but to several Noblemen then alive, who could not but know, whether what he affirms to have been done in open Parliament thirteen Years before, was really done, or not ; for his Letters

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\* *Number VI, VII.*

## The P R E F A C E.

bear date *Jan. 14. 1566*, and that was done in Parliament in the first Year of *Queen Mary*, which was in 1553. I need say nothing of *Sir Thomas Craig*, who wants no Authority with the Writers on that side of the Question: And therefore let me put the *Remarker* in mind that how little soever the Case of *Barbaricus* or *Barbarius*, which he cites from *Hottoman*, was to his purpose, he'll find by *Craig* \* that it is mistaken too. If the *Remarker* has not mistaken *Hottoman*, *Hottoman* has mistaken the Case in Law.

I have been larger in my Reply to the Author of the *Remarks on Mr. Higden's Eutopian Constitution*, as he is pleased to call it, than to the Author of *A Letter from the Natural Born Subject*, because he does not so frequently and so long wander from the Question, as the latter, who sometimes

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\* *Right of Succession*, p. 297.

## The P R E F A C E.

loses Sight of it for many Pages together, however what is said to one of them, is generally a Reply to both.

As to the *English Constitution* fully stated which came very late to my Hands, I have only taken so much notice of it, as to shew, it would not have deserved more, had it come sooner.

I cannot but think my *Answerers* after they have read my *Defence*, must be convinced they have made very many and great Mistakes in our English History, which yet they have delivered with as great Assurance, and drawn important Consequences from them. It may possibly not be so easy to convince them of their Mistakes in Law, because the Sense of Laws will more easily bend to an Hypothesis, than Matters of Fact, which are inflexible. However a Conviction of their Mistakes in History should, methinks, lead them to suspect they may be mistaken in the Sense of our Laws, where their Assurance cannot be greater, than it has been in the former,

## The P R E F A C E

former, and their Study, I believe, has been less. They should suspect this the rather, when they consider, that they differ from those, whose Profession it is, and who are in a manner unanimous in these Points of Law, whilst themselves who differ from them, do in several of these Points differ from one another too.

But whether the Writers shall make these Reflections or no, methinks some of their Readers, who are apt too implicitly to take things upon trust, should not, if they read on both sides, fail to make them. However I think neither should esteem it (as my *Answerers* have done) an ill Office in those, who believe them mistaken, to endeavor to set them right, and to bring them into an Establishment, which (if they could lay down their Scruples) they themselves would believe was for the Interest of their Country, and for the Interest and Preservation of a Community, that ought to be yet still dearer to us, I mean, that of our excellent Chuurch.

The



# The CONTENTS.

A Reply to the Remarker's PREFACE.

## C H A P. I.

**A** Defence of the first Chapter of the View that the Supreme Authority of the English Government rests in the King for the Time being, and the Allegiance of the Subject is due to him by the Common Law of this Realm.

## C H A P. II.

A Defence of the Second Chapter of the View, that the Sovereign Authority, particularly the Legislative Authority of Kings for the Time being, and their Two Houses of Parliament, is acknowledged by the Statute Law of this Realm.

## C H A P. III.

A Defence of the third Chapter, wherein some other Objections to the Legislative Authority of these Kings are answered,

## C H A P. IV.

A Defence of the Fourth Chapter, in which the Allegiance of the Subject was proved to be due to the King for the Time being, by the Statute Law of this Realm, with an Answer to the most considerable Objections.

## C H A P. V.

A Defence of the fifth Chapter of the View, wherein the Objection from the Act of Recognition, 1 Jac. 1. is answered.

C H A P.

# The CONTENTS.

## C H A P. VI.

*A Defence of the Sixth Chapter, wherein this Account of our Constitution and Laws was supported by the Opinions and Authorities of some of the greatest modern Lawyers, who lived in the Reigns of Hereditary Kings, and the Case of the Oaths resolved from this account of our Legal Constitution.*

## C H A P. VII.

*A Defence of the Seventh Chapter, that our Laws in this Point, are not contrary to the Holy Scriptures, and the Doctrine of our Church, but rather agreeable to both.*

## C H A P. VIII.

*A Defence of the Eighth Chapter of the View, that our Laws in this Point are agreeable to the great End and Design of Government.*

## C H A P. IX.

*A Defence of the Ninth Chapter of the View, that our Laws in this Point are agreeable to the Practice of all Mankind, particularly of God's own People, the Jews, and the Christians of the earliest Ages.*

## C H A P. X.

*Reflections on some of the Errors of the Natural Born Subject, and on his Opposition to the Remarker in some Points.*

T H E

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*A Defence of the View of the English Constitution, &c. by way of Reply to the Utopian Remarker, with some Animadversions, on the Natural Born Subjects Letter.*

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*A Reply to the Remarker's Preface.*

**I**N the Preface we meet with nothing to detain us, unless it be this Remark, I might have said, that some Acts made even by Kings de Jure, (as some made by Hen. VIII. a King de Jure and his Parliaments,) were never Repealed, and yet no more Notice taken of 'em in following Reigns, than if they had never been made, being against the English Constitution, and that Mr. H. knew this well enough, but wisely took no notice of it, because it would have spoil'd his Hypothesis.

The Remarker, I think, ought to have been more particular, and told us what were these Laws of King Henry VIII. which were never Repealed, and yet no more Notice taken of 'em in following Reigns, than if they

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had never been made. However, I doubt not but he means those Acts, which were made by King Henry VIII. to Limit the

Descent of the Crown; since he Remark p. 84. says, that *all Acts made to Disinherit the next Heir, are Null and Void, being against the Constitution of an Hereditary Monarchy.*

But the Remarker was a little too forward, in saying, that I knew there was no notice taken of these Acts in succeeding Reigns. I know indeed there is a like Remark in the Preface to *Jovian*, (a Book which he recommends to me) but I knew it to be a mistake there, and shall prove it to be so here. In the Opinion of the learned Author of that Preface, there is a *fundamental Law of the Monarchy, which seems to Invalidate all Acts of Parliament that limit and bind the Succession.* It was by this Law, saith he, that the Act of Parliament, which Impower'd King Henry VIII. to dispose of the Crown by his last Will and Testament, to what Person or Persons he pleased, proved Ineffectual to the House of Suffolk, to which he bequeathed it after the Death of Queen Elizabeth. If, saith he, these Statutes of King Henry VIII. were not Null and Void by what Authority was the House of Suffolk Excluded, and King James admitted, con-

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*trary to so many Statutes ? To which Question this short Answer might suffice, that there was no Statute for the Admission of the House of Suffolk, nor for the Exclusion of King James, and the House of Scotland ; nor was that Power of disposing of the Crown, which was given Henry the VIII. by Act of Parliament, ever put in Execution by that King for the Admission of the former House, or Exclusion of the latter. And therefore to say, that the House of Suffolk was excluded and King James admitted to the Throne contrary to many Statutes, is a Mistake both in Law and History.*

But because this imaginary Nullity of the Acts of Settlement made by King Henry the VIII, has been urged with so much Assurance, to prove, that the Descent of the Crown cannot be limited by Act of Parliament : I shall shew, that those Acts were held valid in succeeding Reigns, and put in Execution according to their true intent and meaning.

The last of those Acts passed in the Thirty fifth of Henry the VIII. which made some Alteration in the former Acts of Settlement, and fixt the Descent of the Crown ;

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and which the Author of *Jovian* expressly refers to in the Margen, as *an Act that was null in it self*.----This Act, I say, consisted of two Parts. First, the Crown was to descend to that King's Son, Prince *Edward*, and the Issue of his Body; in default of such Issue, to the Heirs of the Kings Body by his present Marriage, whether Male, or Female; in default of such Issue, to the Lady *Mary* and her Heirs; and if she dyed without Issue, to the Lady *Elizabeth* and her Heirs.

Secondly, In case all these should die without Issue, the King had full Power and Authority given him by this Act, to dispose and limit the Crown to descend on such Person, and Persons in Remainder, and Reversion, as he should name, and declare in his Letters Patents under his Great Seal, or by his last Will in writing signed by his own Hand.

And was there *no Notice* taken of this Act of Settlement in succeeding Reigns? Not in *Utopia* it seems, but in *England* most signal Notice was taken of it, both in *Fact*, and in *Law*. First, in *Fact*; for Queen *Mary* \* claimed the Crown chiefly by

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\* See her Letter to the Privy Council in *Heylin's History of the Reformation* p. 157.



Virtue of this Act, and She, or Queen *Elizabeth* could have no other Title to it. Both of them could not have a Title by Birth, and yet Both successively ascended the Throne by this Act of Settlement. Both had been declared by Law Illegitimate, in the Twenty Eighth of *Henry* the VIII. and one of them was not of Legitimate Birth, and therefore could have no other Title to the Throne, but what this Act gave her.

Secondly, In *Law*, there was as signal Notice taken of it; for the very Act of Recognition of Queen *Elizabeth*, part of which the *Remarker* has printed in his Appendix Num. 13. doth, in the other part, which he hath left out, declare, *that in and to the Princely Person of Queen Elizabeth, and the Heirs of her Body lawfully to be begotten, the Royal Estate, Crown, and Dignity of this Realm, with all Jurisdictions, &c. are, and shall be, most fully and rightfully invested and annexed, as rightfully and lawfully to all Intents, Constructions, and Purposes, as they were in her Father the late King Henry the VIII. \* or her Brother King Edward the VI. or her*

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\* Here the Remarker breaks off.

*Sister Queen Mary, at any time since the Act of Parliament made in the 35th Year of King Henry the VIII. intituled, an Act concerning the Establishment of the King's Majesty's Succession in the Imperial Crown of this Realm. ----- And that it may be enacted by the Authority aforesaid, that as well this Declaration, as also the Limitation and Succession of the Imperial Crown of this Realm contained in the said Act, made in the said 35th Year of her most noble Father, shall remain and be the Law of this Realm for ever.*

Could there be greater Notice taken of an Act of Parliament, than there was of this Act of Parliament, of which the Remarker saith, *no Notice was taken?*

But why was the other Part of that Act of Succession in the 35th of Henry the VIII. which empower'd that King to dispose of the Crown by his last Will, ineffectual to the House of Suffolk; and why did the House of Scotland succeed to the Crown of England? Not by reason of any Nullity of that Act of Succession, as the Author of *Jovian* imagines, but because King Henry the VIII. never executed the Power, which that Act gave him. He did not by his last Will, signed with his own Hand, exclude the House of Scotland, and bring

bring the House of *Suffolk* into the Succession. There was indeed a Will drawn for that purpose, but it was never signed by the King, as the Act of Parliament expressly required, and such an extraordinary Power, as that was, must have been executed according to the precise Form of the Statute, that gave that Power; otherwise it was not valid. There was indeed a Stamp put to this Will by a mean Person, named *Clerk*, which would, not for the Reason aforesaid, have been a legal Ratification of the Will according to the Statute, had it been done by the King's Order, much less when it was done without his Order, or Knowledge. For tho' by this Act the King might, yet *Clerk* could not dispose of the Crown. Of all which there are undeniable Proofs in the Scotch Secretary *Lethington's* \* Letter to Sir *William Cecil* the English Secretary, and in Sir *Thomas Craig's* Right † of the Succession. The former calls this a *forged Will*, and the latter, a *Forgery*, and both of them by undoubted Evidence prove it to be so.

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\* Appendix to the 1 vol. of the History of the Reformation N. 30.

† P. 343, 344, 345.

Thus the *Remarker's no Notice*, and the Author of *Jovian's Nullity of King Henry the VIIIth's Acts of Succession*, and the *House of Suffolk's Exclusion*, and *King James's Admission to the Throne*, contrary to the Authority of many Acts of Parliament, appear to be, what I said they were, Mistakes both in Law and History.

How candid a Censure then was this of the *Remarker*, that I concealed what I knew to be true? which yet no Man could know to be true, because it was false, and which I knew to be false. What a handle has he given me, (were I disposed to lay hold on it) by breaking off in the Recognition Act of Queen *Elizabeth*, with an &c. \* in the midst of a Sentence, which Sentence, (as the Reader might have seen had he printed it entire) doth take most remarkable Notice of this Act, of which the *Remarker* saith, *no Notice was taken*. It is not impossible, but it might be an oversight; and I shall be glad if it was so.

It is evident, as I have said, that either Queen *Mary*, or Queen *Elizabeth*, was illegitimate, and therefore could have no other but a Parliamentary Title to the

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\* *Remarkers Appendix Num. XIV.*



Crown: And yet it is certain; that *Queen Mary* was brought to the Throne chiefly by the Assistance of her Protestant Subjects, who yet generally did not believe her of Legitimate Birth; and *Queen Elizabeth* was proclaimed by the Authority of a Popish Parliament, who as generally believed her Illegitimate. Which shews that both Protestants and Papists agreed in maintaining the Act of Succession, that was made in the 35th of King *Henry* the VIII. and consequently Both, believed the Descent of the Crown of *England* was limitable by Act of Parliament.

And as these Acts were held to be of force in succeeding Reigns: So none doubted of their Validity in the Reign of King *Henry* the VIII. when they were made; but all swore to the Succession as it was established by Act of Parliament; even Bishop *Fisher*, and Sir *Thomas More* that had been Lord Chancellor, who chose to lay down their Lives rather than take the Oath of Supremacy; and absolutely refused to swear to the Preamble of the Act of Succession, which affirmed the Nullity of the King's Marriage with *Queen Catherine*, the Lawfulness of his Divorce, and the Validity of his Marriage with *Queen Anne*: Yet both these Great Men voluntarily offer'd  
to

to swear to the Succession, as it was established by the 25th of Henry the VIII. which limited the Descent of the Crown to the King's Issue by Queen Ann, which according to their Opinions of the King's Marriage and Divorce they must believe Illegitimate, and excluded the Lady Mary whom they believed his Legitimate Issue.

Bishop Fisher in a Letter to Secretary Cromwell, gave the reason of his Conduct in this Matter: *I must beseech you, good Mr. Secretary, to call to your Remembrance, that at my last Being before you and the other Commissioners, for taking of the Oath concerning the King's most noble Succession; I was content to be sworn unto that Part concerning the Succession. And there I did rehearse this Reason which I said moved me. I doubted not but that the Prince of any Realm, with the Assent of his Nobles and Commons, might appoint for his Succession Royal such an Order as was seen unto his Wisdom most according. And for this reason I said I was content to be sworn unto that Part of the Oath as concerning the Succession. This is a very Truth as God help my Soul; albeit I refused to swear to some other Parcels, because that my Conscience would not serve me so to do.*

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As Sir *Thomas More* made the same Offer with Bishop *Fisher*, so we cannot doubt but he made it on the same Principle; or if any one doth doubt this, his doubt will soon be satisfied, when he reads the Conference betwixt Sir *Thomas More* and *Rich* the King's Solicitor, as it is related by my Lord *Herbert*. \*

I need not descend to the Laws made in Queen *Elizabeth's* Reign, which declare the Descent of the Crown to be under the direction of the Legislative Power, or go to prove from Reason *that the Supreme Power can limit the Descent of the Crown*; tho' this one Reason I think is sufficient, because it cannot limit it self. Indeed nothing can limit the Supreme, but a superior Power, nothing but a Law of God: and let any one produce a Divine Law for Hereditary Succession in Kingdoms, and I'll grant it unalterable by any Humane Power, but since no such Divine Law can be produced, we must own the Descent of the Crown to be under the Direction of the Legislative Power.

This is more than was necessary for my own Vindication, against the *Remarker's*

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\* History of King *Henry* the VIII. p. 183.



Censure; but I have at the same time vindicated also that part of our Oath to maintain the Succession, as it stands limited to the next Protestant Heirs of the House of *Hannover*.

## C H A P. I.

The Title of my first Chapter was this.  
*The Supreme Authority of the English Government rests in the King for the Time being, and the Allegiance of the Subject is due to him by the Common Law of this Realm.*

**A**S in the *View of the English Constitution*, I laid down certain Propositions, which I made the *Titles* of so many Chapters, so I wish these Gentlemen had answer'd me in the same Method, that the Reader might have seen what were the Points in Debate betwixt us, and thereby have more easily judged, how far my Arguments, or their Answers, amounted to a Proof or a Disproof thereof. However, I shall keep to my own Method, and begin with the Defence of the first Chapter: Wherein I proved the *common Custom and Usage of the Realm* was so evidently on the side of the Regnant King, that the People of *England* always submitted, and took Oaths  
of



of Fidelity to the Thirteen Kings, who from the Conquest to *Henry the VII.* came to the Throne without Hereditary Titles, as well as to the Six Hereditary Kings, who reign'd in that Period.

The *Remarker* in Answer to this is very unfortunate in his first Argument, where he says, *that Allegiance is not due to a King de facto by Common Law; for what Common Law had the first King de facto to plead? Could he plead Custom before there was any such thing? This would be absurd in the first King de facto, whatever it were in others.* Now I never said or imagined, that Allegiance was due, to the first Non-hereditary King, by Common Law, but that it is *Now*, and for many Ages has been due to the King for the time being. \* The first Non-hereditary King could not challenge Allegiance by common Usage; no more could the first King in the Hereditary Line, no nor by Inheritance neither; and yet the *Remarker* will not say Allegiance is not due to Hereditary Kings by common Law or Usage., Indeed, according to this way of arguing, *Common Law* or *Usage* could never be pleaded for any

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\* Remarks p. 3.

thing, because it could not be pleaded for the first thing of that kind ; and the longest Series of Precedents could signify nothing ; because the first Precedent had no Precedent. Thus his Argument by proving too much proves nothing, and would however have been ill employed against me in this Place, where I had expressly asserted (as the Remarker himself takes notice) *that common Custom and Usage doth not obtain the Force of a Law till after a long Tract of time.*

The Remarker goes on. *We will grant all this (i. e. the common Custom and Usage of taking Oaths of Fidelity to all these 13 Non-hereditary Kings ;) and yet the People of England might take Oaths of Fidelity to them, as coming to the Throne with an Hereditary Title for all that : For most if not all those &c. claimed as Heirs or Conquerors, or both ; as William the Conqueror ; and always declared they held the Crown by Title of Blood, and as such their Parliaments recognized them, and the People swore to them. In short, they were Kings de facto and Usurpers, but Allegiance was paid them as pretended Heirs of the Crown. † They claimed and reigned sub ratione*

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† Remarks p. 4.

juris, and therefore Oaths were taken to them as Kings de jure, and not de facto.

\* William the Conqueror and all his Successors reigned by an Hereditary Title, or a pretext to it. William the Conqueror declared himself King by Hereditary Title as well as Conquest. William Rufus claimed as Testamentary Heir to his Father, &c. p. 24.

† The Remarker has here jumbled together three things, that are of a distinct Nature, and require a distinct Consideration, viz. The Claims of these Princes, the Recognitions of Parliament, and the Submission of the People.

1st, As to the Claims of these Princes, he saith, that they all claimed *sub ratione juris*, that they all claimed and reigned by an Hereditary Title, or a pretext to it. That they all claimed *sub ratione juris*, under the Notion of some Right or other I readily grant : But that they all claimed by an He-

\* Ibid. p. 14.

† Ibid p. 21.

[ The Natural Born Subject falls in with the same Hypothesis p. 38. & say: there will be left but three, that is Henry I. King Stephen, and King John, upon whom it can be alledged that they came to the Crown, without Pretence of an Hereditary Right, and in the 39th and 40 Page he attempts to prove that these three also came to the Throne with the same Pretences.]

juris



editary Right, or a Pretence to it, I deny. I further grant, that most of them claimed by Hereditary Right or a Pretext to it ; but then the *Remarker* knows, or ought to know, that several of these who claimed by Hereditary Right, did not mean what he does throughout his Book, when he speaks of Hereditary Right, as the only Right to the Crown, viz. a Right as next Heir by Proximity of Blood. To instance in *William I.* with whom the *Remarker* begins, and *who*, as he says, *declared he held the Crown by Hereditary Right as well as Conquest*, for which he refers us to a Charter of that King mentioned by *Dr. Hicks*. \* Was *William* the Conqueror, or doth the *Remarker* believe that he was, or that he by these Words meant that he was, next Heir by Blood, to any of his Predecessors in the English Throne either *Saxons* or *Danes* ; Who, as all the World knew, was not Heir to any one of them by Proximity of Blood, and as a Bastard was Heir to no body ? What then doth that King mean by his Hereditary Right to the Crown ? If we will give him leave to explain himself, he tells us in another Charter, *That he was constitu-*

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\* *Literat. Septentrion. Dissert. Epistol. p 72.*



ted by King \**Edward the Confessor the adoptive Heir of his Kingdom*; which agrees with the account that *Ordericus Vitalis* † gives of this Matter; so that there was not so much as a Pretence to what is commonly meant by Hereditary Right, but only to a Donation of the Crown from *Edward the Confessor* a King *de facto*, which was a Claim against the Hereditary Right of *Edgar Ateling*.

*William Rufus*, saith the *Remarker*, was Heir to his Father by Will; and can he say this was a Claim by Hereditary Right, or any Pretext to it, which was no other than a Claim by Will, against the Hereditary Right of his eldest Brother *Robert*?

But I need not particularly consider the several Claims, or Pretexts of the rest of these *Thirteen Non-hereditary Kings*, since the *Remarker* acknowledges, that several of them claimed by Conquest, or by Will, sometimes by a Nuncupative Will, and that attested but by one Witness, as in the case of *Stephen's* Succession, which amounts to no more than this, which I never denied, that

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\* A Charter in the Tower C. C.

In Regnum suum adoptivum heredem instituerat.

† *Ordericus Vitalis* 492.

all these Kings *de facto*, or their Friends for them, set up the Pretences to Hereditary Right, or made some other Claims, in order to gain the Consent of the States, and the Possession of the Throne; and I do freely own this to be true of *William the Conqueror*, and all his Successors *de facto*, as the Remarker says, and if He pleases, of all his *de facto* Predecessors too.

But Secondly, will the Remarker say that these Claims, or Pretences were the Grounds upon which the States, or Parliaments of the Kingdom, placed these Princes in the Throne, or recognized them in it, which he ought to have proved?

As for instance, suppose it was as certain (which is much to be doubted) that *Hugh Bigod* did make Oath, that *Henry* the I. gave the Crown from his Daughter *Maud* to *Stephen*, as it is certain that his Oath, (if he did swear it) was false, which, I think no body doubts. If the Archbishop of *Canterbury* was induced by this Oath to crown *Stephen*, can the Remarker prove, that the Great Men of the Realm were induced by the same Motive to recognize him? He may find in *Mr. Colliers Ecclesiastical History*, \* that they

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\* p. 326.

proceeded upon other Motives, as did the Pope afterwards in his Bull of Confirmation of his Title. The Bishop of *Winchester* who was *Stephen's* Brother, and had been the great Instrument of his Advancement, declar'd \* in the Council of *Winchester*, that because it seemed too long to wait for *Maud*, who delay'd her coming from *Normandy* into *England*, they provided for the Peace of the Kingdom by permitting his Brother to Reign. Nay *Stephen* himself in his Oath (which *William* of *Malsbury* hath inserted in his History) enumerating his Titles, pretends to None, prior to a National Consent; and will the Remarker say, this was an Hereditary Right, or any Pretext to it? No, the Natural Born Subject is against the Remarker here, saying, when all other Pretences fail'd, they [some of these Thirteen Kings of whom he was speaking] plead'd the Choice of the People. † The Remarker will possibly say, that as the Natural Born Subject departs from him here, so doth he at the same time contradict him-

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\* Itaque quia longum videbatur Dominam expectare, quæ moras adveniendum in Angliam necessebat (in Normannia quippe resederat) provisum est paci patriæ & regnare permissus est frater meus. *William* of *Malsbury*. *Hist. Novellæ* l. 2. p. 106. who saith, he was present and heard this Speech.

† A Letter. p. 40.



self, who had also affirmed, and been endeavouring to prove in the preceding Pages, that all these Thirteen Non-hereditary Kings, *came to the Crown with Hereditary Right, or a Pretence to it.* And the Remarker has reason to charge him with this Contradiction; for the Consent of the People is neither Hereditary Right, nor any Pretence to it. But I shall leave these two Friends to reconcile this matter betwixt themselves.

Of all these Kings none made so direct a Claim by Proximity of Blood, as *Hen. IV.* and yet that Parliament, which was so well inclined to set the Crown upon his Head, made no express Recognition of this Hereditary Right, which he pretended to, and they knew he had not. He had too much power to be told, he had it not; but on the other hand they pass'd no Act to Recognize it, but contented themselves to declare in general terms, *That the Duke should reign over them.* And accordingly in the Act of Parliament the 7. *Hen. IV.* c. 2. made to Entail the Crown to that King and his Four Sons by Name, there is not one word, that implies that *Hen. IV.* held it by Hereditary Right.

3dly. It doth not appear, that the People in their Submission had any regard to these Claims. The Remarker says indeed, the  
Peo-



People submitted to 'em as of Right, but has not proved that they submitted to these Kings upon the score of Hereditary Right, or of any Right at all antecedent to their Possession; which of all things he ought to have done, if he would have answered *the View*, which concerns itself only with the Subject's Duty. He acknowledges these Kings *de facto*, knew there were better Titles than their own. And did not the People, who liv'd at the same time, know this as well as those Princes, or as the *Remarker* doth at this distance? If they submitted to the Regnant Princes only on the account of the Claims they made, why did they submit to the Prince, who had the worse Claim; and not reserve their Allegiance for the Prince, who they knew had the better Title? Why did they always submit to that Prince, who possess'd the Throne with the Consent of the States, or the Recognition of the Parliament, whatsoever his Claim was; and not to the Unpossess'd, Unrecogniz'd Prince?

So that all this stir which he has made about Claiming *sub ratione juris*, has only rais'd Dust about the Questions which are betwixt us on this Head; whether these *Thirteen* were really Non-hereditary Kings, or not? and whether, notwithstanding, this the Peo-

ple of *England* submitted to them or no? That the People submitted to these Kings, he owns, where he so often asserts, *that they submitted to them, because they claimed sub ratione Juris*; tho' that they submitted for this Reason, he has nowhere proved. And own he must also, on his own Principles, that they were Non-hereditary Kings: For will the *Remarker* say, a Testamentary Heir is the right Heir? That *William* the Conqueror was King by Hereditary Right, because he declared, he was so, in another sense than the *Remarker* understands it? That *Henry I.* was next in Blood, because *chosen as next by a Faction*? That *Stephen* was Heir to *Henry I.* because one falsely swore, he made him Heir by a Nuncupative Will? If he will not say this, then these will still be *de facto* Kings, and the assertion of the View will still hold good, that, by the common Usage of the Realm, Allegiance is due to Kings *de facto*. \* q. e. d.

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\* I need not go on to prove, that, upon the *Remarker's* Principles, the rest of these Thirteen were Non-hereditary Kings, since he in effect owns it of them all by Name, except of *Henry II.* and *Henry III.* But doth he not know, that *Henry II.* came to the Throne without an Hereditary Title, his Mother, *Maud* the Empress, being alive; and that *Henry III.* did the same, his elder Brother's Daughter *Eleanor* being alive? both which I shall prove in another Place.

The Question, as I ever understood it, was What these Princes really were : Not, What they pretended to be. What Claims they truly had, or at least the People believed they had : Not, what Claims they made, or what Pretences were made for them? But since the *Remarker* has thought fit to change the state of the Question, I'll joyn Issue with him upon it, as he has stated it. Let us suppose then for once, that they all claimed *sub ratione Juris*. Was this alone a sufficient Reason for the Subjects to swear Allegiance to them? Yes; he positively affirms it. These are his Words, *so that 'tis plain, that all those Kings de facto claimed as de jure, which is, if there were no other, a good Reason for the Subjects not refusing to swear Allegiance to them.* p. 23. If the *Remarker* will abide by his Assertion, there's an end of the Controversy, and no Subject now ought to refuse to swear Allegiance to the Queen, who claims as *de jure*: And there is a better Reason still to take Oaths to Her Majesty, because she doth not only Claim *de Jure*, but is *de Jure* too. Tho' barely to Claim as such, is with the *Remarker*, and all the *sub ratione Juris* Men, a sufficient Reason to take Oaths of Allegiance now, and which they cannot refuse without renouncing this Principle. I do



not see, but their Cause is lost either way. If to save their Hypothesis, they'll stick to their Principle of *sub ratione furis*, they are in consequence of it oblig'd to take the Oaths now; but if to avoid the consequence, they'll let go this Principle, which is the main Salvo of their Hypothesis, their Hypothesis will fall with it, and they will, it is to be hoped, come into the Doctrine of the *View*, that it is the Custom and Usage, which is the Common Law of the Realm, to submit, and take Oaths of Fidelity to the Regnant Prince, whether with, or without an Hereditary Title.

His 3d. Answer is, *That these were Popish Times, in which the Pope with his Popish Clergy had a very great stroke in pulling down and setting up Kings, and had, or at least pretended to have, a Power of Absolving Subjects from their Oaths of Allegiance: and no wonder, if Subjects misled by the Pope and his Clergy, paid their Allegiance where they directed them,* P. 14. \*

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\* *The Natural Born Subject has the same Answer.* Another Consideration, saith he, in Favour of our Ancestors in those Times, may be the Great Power of the Popes in those Days, who took upon them to dispose of all Crowns, particularly that of *England*, which they had once put in Subjection to them by King *John*, Letter p. 70.

That



That Popes have both taught and practised the deposing Doctrine, and have pretended to absolve Subjects from their Oaths of Allegiance, is beyond Dispute: But this has been generally done by them, when Princes have been Hereticks, or Fautors of Hereticks, or have made some Attempts on the *Regalia* of St. Peter, but they have rarely employed their Thunder, or their Graces in the Contests of Princes betwixt one another about their Titles.

And therefore the *Remarker* should have proved, that the several *Popes*, in these Times, did put in practice their pretended Power of absolving Subjects from their Allegiance, not barely that *Popes* pretended to such a Power of Absolution.

Nay 2ly. He should have proved farther, that our Ancestors in *Popish* Times had recourse to the *Popes* for such Absolutions; or that it was in consequence of such Absolutions granted by *Popes*, that they took Oaths of Allegiance to Non-hereditary Kings. But this he hath not proved, nor attempted to prove.

Our Ancestors, 'tis true, too easily submitted to the *Pope's* Supremacy, which was a Usurpation upon the Prerogatives of Kings, as well as upon the Rights of all Christian *Bishops*, who were his Collegues.  
How-

However, they never permitted that Absolute Jurisdiction, which Popes claimed, to take place in *England*; but resolutely withstood many Papal Encroachments both in Church and State, and raised Diques and Banks against the Inundation of the Plenitude of their Power. I must always except the scandalous Submissions, that were made in the time of King *John*, to the more scandalous Usurpations and Impositions of the Pope and his Legate *Pandulphus*, to which a Gap was open'd by the unhappy Circumstances of that Reign.

The Pope, as Supreme Pastor, pretends that all Christians, as being his Sheep, are under an Obligation to hear his Voice. He speaks to them by his *Legats à latere*, in his *Canons*, or Laws, and in his *Bulls*.

As for his *Legats à latere*, it appears by the † *Year Books*, as well as our Histories, that they were not permitted to come into *England* without the King's leave, and were obliged to take an Oath, that they *would attempt nothing that was derogatory to the King, and his Crown*.

As for the Popes *Canons* or Laws, they were never held Obligatory in *England*,

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† II, Hen. VII, fol, 10,

unless they were received. When the Parliament was moved to admit the Papal Canon, which Legitimates Children born before Marriage, provided the Persons were married afterwards: All the Earls and Barons answer'd with one Voice, *that they would not change the Laws of England that have been hitherto used and approved.* †

The Pope, as Head of the Church, pretends to be the \* Ordinary of Ordinaries, and the Collator of Collators. Notwithstanding which by the Statutes of *Provisors*, all Persons were prohibited to procure or accept of any Ecclesiastical Dignities, or Benefices from the Pope, by Collations, Provisions, or Reservations, under the pain of being imprisoned, till they had made Fine and Ransom at the King's Pleasure, &c. *25th Edw. III.* and of being banished, and their Goods and Cattels confiscated, *13th Rich. II. ch. 2.* Nay, all Licences from the King to execute such Provisions, are declared void by the *7th Hen. IV. ch. 8.* and the Disturbers by such Provisions, notwithstanding the King's Licences, incurred a *Præmunire* *3. Hen. V. c. 4.*

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† *20th Hen. III. c. 9.*

\* See P. Simon's *Hist. of Ecclesiastical Revenues.* p. 86.



As for the *Bulls* of Popes, they have been as little regarded. Their Bulls to exempt Religious Persons from Obedience, by the 3<sup>d</sup>. *Hen.* IV. c. 3. and their Bulls to discharge the *Cistercians* or other Persons, from the payment of Tythes by the 3<sup>d</sup>. *Hen.* IV. c. 8. the 7<sup>th</sup>. *Hen.* IV. c. 6. were declared void; And those that purchased, or put in Execution the said Bulls, incurred a *Præmunire*. Even those Bulls, wherein the Popes enforced their Legislative by their Coercive Power, their Bulls of Excommunication, were declared to be of no force in *England* by all the Judges, as appears in the *Tear Books* 8<sup>th</sup>. *Hen.* VI. fol. 3. 12<sup>th</sup>. *Edw.* IV. fol. 16. and 1<sup>st</sup>. *Hen.* VII. fol. 11. And any Persons that purchased, or executed the Popes Bulls of Excommunication against the Bishops of *England*, for executing Sentences given in the King's Courts, incurr'd a *Præmunire* by the 16<sup>th</sup>. *Rich.* II. ch. 5. And those that brought Summons, or Excommunications into the Realm in Derogation of the Statutes of *Provisors*, Forfeited all their Lands and Tenements, Goods and Chattels for ever, and incurred the pain of Life and Member by the 13<sup>th</sup>. *Rich.* II. ch. 3. And therefore in the Oath, which the Pope's *Collector* in *England* was obliged to take, amongst other things,



things, there were Two Clauses that he would not execute, nor suffer to be executed any Papal Bulls, or Mandates that were prejudicial to the King, or his Regality, his Laws, or the Kingdom.

And that he would immediately deliver to the King's Council all the Letters he should receive from the Pope, or any other Person, before he published them, † or delivered them to any Person living.

Before any Bishop's Temporalties were restored, he was obliged to Renounce upon \* Oath all the Words, contained in the Pope's Bull, that were prejudicial to the King and his Crown: As well as to take the Oath of Homage to the King. † After which the Writ was

† Nullam executionem literarum vel mandatorum Domini Papæ per me, vel alium faciam, nec fieri permittam, quæ poterit esse præjudicialis Regiæ Majestati dicti Domini nostri Regis, aut Regaliæ, legibus, vel juribus suis, vel eidem Regno.

Nullas Literas Papales nec alias recipiam, nisi eas citius, quo potero, deliberavero Concilio dicti Domini nostri Regis antequam publicentur, seu deliberentur alicui personæ viventi. Fœdera, Conventiones, &c. Tom. 8. p. 86.

\* The Form of the Oath of Renunciation. *I renounce all the Words, comprized in the Popes Bull, made unto me of the Bishoprick of Bathewhich be contrary and prejudicial to the King, our Sovereign Lord, and to his Crown. The Book of Oaths p. 137.*

† *Eo quod idem Episcopus omnibus & singulis verbis, in dictis literis Bullatis contentis, nobis & Coronæ nostræ*

issued

issued out for the Restitution of his Temporalities.

When Pope *Boniface VIII.* sent a Monitory Bull to King *Edw. I.* to desist from his War against *Scotland*, pretending the Sovereignty of that Kingdom was held of the Apostolick See; The Lords, assembled in Parliament, declare in a Letter to the Pope, That their Sovereign Lord the King is, *by no means obliged to acknowledge the Pope's Jurisdiction, or submit to his Sentence with respect to the Sovereignty of Scotland, or indeed in any other temporal Matter whatsoever.* † And in one of the Statutes of *Premunire*, for bringing, or pursuing any Papal Instruments of Process, or Sentences of Excommunication for Executing the King's Commands, &c. It is declared, that *the Crown of England, which hath been so free at all times, that it hath been in no Earthly Subjection, but immediately subject to God in all Things, touching*

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*præjudicialibus, palam & expresse renunciavit Anno Regni Rich. secundi 21. Fædera Conventiones, &c. Fol. 8. p. 20.*

† *Quod præfatus Dominus noster Rex super juribus Regni sui Scotiæ, aut aliis suis Temporalibus nullatenus judicialiter respondeat coram vobis, nec judicium subeat quoquo modo, &c. Fædera, Conventiones &c. Tom. 2. p. 873. signed by about an Hundred Earls, & Barons.*

*the*

the Regality of the same Crown; and to no other, ought not to be submitted to the Pope. And the Lords Spiritual as well as the Lords Temporal, and the Commons engage, that they will and ought to be with the King in those Cases, in lawfully maintaining of his Crown, and in all other Cases touching his Crown and his Regality, as they be bound by their Ligeance. 16th. Rich. II. ch. I could, were it necessary, produce from our Histories, and Laws, a great many more Instances of the same kind. But these are sufficient to convince the Remarker, that our Popish Ancestors had not that Deference he imagines they had, to the Authority of the Popes in all their Encroachments: That they had no Deference at all to their Authority in Temporal Matters: And that it was not upon Papal Absolutions, as he supposes, that they took Oaths of Allegiance to Kings *de facto*.

Lastly, The Government was generally settled, and the People had submitted, before there was any time for the Pope's Intervention.

What time had the Pope to interpose, when *W. Rufus* was kill'd the second of August in *Newforest*, buried the third at *Winchester*, where



where \* *Henry I.* was chosen the fourth day, and Crowned the fifth † at *London*, and the whole Nation immediately submitted to him? What Room was there here for the Pope's Interposition, or Dispensation?

All *England* is said, by *Henry of Huntington*, to have submitted to *Stephen* in the twinkling † of an Eye, who was Crowned, saith *William of Malmesbury*, the Twenty second Day after the Death of *Henry I.* All was over without the Pope's Interposition, who in his Bull afterwards took notice of his Election by the Nobility and Commons.

But the *Remarker* saith, that *Henry VII.* got his Title twice confirmed by the Pope p. 22. which is true: But it is as true,

\* Occiso vero Rege Willielmo, post iussa funeri regio perfoluta in Regem Electus, (Henricus scil. primus) aliquantis tamen ante controversiis inter procères ageratis atque sopitis. W. Malmsh. Hist. l. 3. fol. 88.

† Quapropter certatim plausu plebeio concrepante in Regem coronatus est Londoniæ Nonis Augusti 4to post obitum fratris die. Ibid.

Vid. Hen. Huntindon l. 7. fol. 26. b. Moved in Henrico I. f. 268. b. plenario consensu & consilio totius communitatis Regni ipsum sc. Robertum refutaverunt & Henricum fratrem in Regem erexerunt. H. de Knyghton col. 2374.

\* Repente omnis Anglia sine mora, sine labore quasi ictu oculi ei (Stephano sc.) subjecta est, Hen. Huntind. l. 8. fol. 221. b.

Coronatus est ergo in regem Angliæ Stephanus undecimo Kalendas Januarii Dominica vicesima secunda die post, excessum avunculi. W. Malmf. Hist. Novell. l. 1. f. 1101.

that



that he did not procure even the first Bull in Confirmation of his Title, till the second Year of his Reign, long before which time the whole Nation had submitted to him, and the Parliament entailed the Crown on him, and the Issue of his Body, which was done in the first Parliament, and first Year of his Reign. So that the *Remarker's* own Instance is against him, and proves, as well as those which I have given, that in submitting to those Kings, they acted as *English Men*, not as *Papists*.

But whilst the *Remarker* is giving Reasons, why the People might, and ought to, have submitted, he is endeavouring to prove, that some did not submit, or that the Submission was not so universal, as I have represented it, and as he, at other times himself seems to grant it was, and ought to have been. I had said, *that in all these Thirteen Reigns of Non-hereditary Kings, I did not know there were any Non-jurors to be found.* Before these Answers to my Book were publish'd, I was told by some of my old Friends, that *I should find there were Non-jurors heretofore*; and I believe, some expected a long List of Lords Spiritual, Lords Temporal, and Commons, who had refused Oaths of Fidelity in every one of those

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Reigns : But they may now see, after the *Remarker's* Inquiries thro'out all those *Thirteen* Reigns, he has been scarce able to name *Thirteen* Non-jurors; and when I have examined those he has named, they may find that Most, if not All were certainly no Nonjurors, and that he has not been able clearly to prove One of them was so.

I began with *William I.* and \* proved Oaths of Fidelity were universally taken to him. The *Remarker* † thinks *the Testimony of Ingulph which I alledged doth not prove this.* It proves what I alledged it for, *that the Conqueror issued out an Order for every Inhabitant of England to swear Fealty to him, as well as all their Lands to be measured and valued.* I added, *that we hear not of one Refuser*; nor has the *Remarker* been able to produce one. He would indeed have the Abbot of *St. Albans* to be a Non-juror. What did he refuse to take an Oath of Fealty to *K. William I.*? No, but *he offer'd opposition to Duke William.* He may as well reckon *Harold's Army* for Non-jurors, who opposed *Duke William* when he Invaded *England*; and yet as well as others that opposed him, submitted to him, after he was King of *England*. So that I may still say, *we do not yet hear of one Refuser* amongst all his Subjects. But what can be more exprefs, than *Hoveden's Testi-*

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\* *View p. 2.*

† *Remarks p. 15.*

\* *Remarks p. 122.*  
mony,



mony, which I produced at the same time,  
*\* That the great Men and Tenants by Knight's  
 Service swore Fealty to him at Salisbury?* But  
 of this the Remarker has taken no notice: To  
 these I will only add one Testimony of William  
 of Malmbsbury, who saith, † that William I.  
 without any opposition bound all the Freehol-  
 ders, whatsoever their Tenure was, by an Oath  
 of Fidelity to him: and another of Ranulph  
 Higden, who, speaking of some of the greatest  
 Men of the Nation, saith, all || these, with  
 the rest of the Nobility having given Hosta-  
 ges, and sworn Fealty, submitted to the Con-  
 queror.

I could by the like positive Testimonies of  
 the most Authentick Historians prove, that the  
 People of England submitted, and took Oaths  
 to such of his Successors, who came to the  
 Throne as he did, without an Hereditary Ti-  
 tle. As to his immediate Successor, William  
 Rufus, He, as Brompton † relates it, was ad-  
 vanced to the Throne in a great Council of  
 the Kingdom. After which the whole Nation  
 chearfully submitted to his Government, and  
 took Oaths of Fealty to him, as William of

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*\* View p. 2.*

† Ut sine ulla contradictione omnes liberos homines  
 cujuscunque essent, suæ fidelitati sacramento adigeret. de  
 Willielmo I. p. 59. b.

|| Hi omnes cum cæteris nobilibus, datis obfidibus, cum  
 fidelitate ei jurata, manus ei dederunt. Polychron. l. 6. in fine.

† Convocatis Terræ Magnatibus Col. 983.

\* *Malmsbury*, and the *Annals of* † *Waverley* assure us.

But I am unwilling to tire the Reader with what is not necessary, for those who are well skilled in the English History know this to be true; and those who are not, will be convinced of it, when they shall see, that those few, whom the *Remarker* has gleaned for Non-jurors thro' all these Reigns, are after all no Non-jurors.

I said || *there had been Revolters in some of those Reigns*, and the *Remarker's* Non-jurors will I believe prove to be no better, and some of them, those very Persons whom I named, or had in my Eye, when I said so. *Odo* Bishop of *Baieux*, who was the chief Author of the Revolt from *William Rufus*, had assisted at his Coronation, as Earl of *Kent*, and Justiciary of *England*; and must, as well the great Men whom he drew into his Party, have sworn Allegiance to *William Rufus*; otherwise their Revolt could not, as I said, † have been charged

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\* *Moxque* volentibus animis *Provincialium* exceptus est, & claves *Thesaurorum* nactus est, quibus fretus totam *Angliam* animo subjecit suo. De *Willielmo* II. l. 4. p. 67.

† *Omnis* gens *Angliæ* ei subdita est, & fidelitatem juravit. Ad An. 1087.

|| *View* p. 3.

† *View* p. 4.

with

with Perjury, as it is by the Archdeacon of *Huntington*.

But the *Remarker* will not have this *Revolt charged with Perjury*, but call'd \* *Repentance*. However this Testimony proves, they had taken Oaths of Fidelity (which was what I alledged it for) otherwise there had been no colour for the *Charge of Perjury*. And whilst the *Remarker* styles it *Repentance*, he seems to have overlook'd my Citation † from *William of Malmsbury*; which shews, that Ambition, Picque, and Discontent, were the Springs of this Rebellion. But let not these Persons stand, or fall by the *Remarker's* judgment, or mine; let us rather hear, what judgment our Ancient English Historians have pass'd upon Them, and their Enterprize.

*William of Malmsbury* calls It a *Revolt*, and *Perfidiousness*, and Them *Renegado's*, and *perfidious Persons*. The Archdeacon of

\* *Remarks* p. 21.

† *View* p. 3.

|| Ita totis defestionis viribus in eum cui nec prudentia nec fortuna deerat, frustra saviebat. De *Willielmo secundo*. l. 4. fol. 68.

Qui entiam Willielmus Dunelmensis Episcopus, quem Rex à secretis habuerat, in eorum perfidiam concesserat. ibid. fol. 67. b.

Desertores, perfidos ibid. b. p. 68.



\* *Huntington* brands It with the Note of *Wickedness, Perjury, and Rebellion*, and gives Them the Character of *Traitors and faithless Persons*. *Roger de Hoveden* † calls it an execrable Fact, the *Treason of the Normans*. And having described their Conspiracy, he says, *Odo Bishop of Baieux, Geoffry Bishop of Constans, and Roger Earl of Shrewsbury, &c. were the chief Authors of this accursed Enterprize.*

The *Annals of Waverley* || compare *Odo's Treachery against the King, to that of Judas Iscariot against our Blessed Saviour*. And almost every one of these Historians have observed, that the famous \* *Wulstan* Bishop of *Worcester*, who was esteem'd the Holiest Person of his time, espoused the King's Cause with the greatest Fidelity and Zeal.

\* *Non sine perjurio bellum moventes. l. 7. fol. 213.*

*Rogerus in castello Nordaie sceleris exercitium non segnius inchoavit ib. Gilebertus ei rebellabat ib. Rex vero terras infidelium fidelibus suis distribuit ib. Episcopus vero multique proditorum propulsi sunt in Exilium ib.*

† *Execrabile factum, Traditionem Normannorum. Roger de Hoveden in Willielmo juniore. fol. 268. b.*

*Hujus execranda rei principes extiterunt Odo Baiocensis Episcopus, Gaufridus &c. ib.*

|| *Iple vero volebat Regi quemadmodum Judas Iscariot fecit Servatori nostro. Annal. Waver. ad An. 1088.*

\* *Wulstanus in sanctitate nostro seculo nominatissimus. W. Malmsb. de Episcopis Wigorniensibus.*

By



By this time the *Remarker* may be convinced, that *Odo* and his Party were not Non-jurors, and were so far from being esteemed Penitents by our Historians of greatest Antiquity and Note, that they are set forth by them in the blackest Colours, and stigmatized for Revolters; and consequently, that the Notions of Government in the Ages wherein they wrote, were very different from the *Remarker's*: † That Subjects then believed Allegiance, and Oaths of Allegiance, were due to the Regnant Prince, and that it was a very heinous Crime to revolt from him, and their Oaths, tho' it were in favour of a lineal Heir. It may be observed, that these Historians (except the Compiler of that part of the *Annals of Waverley*) did not write under *William Rufus*, but the Two first of them in the Reign of *Henry II.* and the III. in that of *Henry III.*

The *Remarker* doth not deny, that *Robert Earl of Gloucester* took an Oath to King *Stephen*, and doth not pretend to find any more Non-jurors, till he comes to *Hen. IVth's* Reign.

As for *Thomas Merk*, Bishop of † *Carlisle*, who as I said, accepted, and pleaded *K. Hen. IVth's* Pardon, which is extant in *Rymer's* † *Fædera*, I urged it to the *Objector* as an Argu-

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† Episcopi Karliolensis de omnimodis Proditionibus Pardonatio. &c. *Fædera Conventiones T. VIII. p. 165.*

ment *ad Hominem*, who said, he could no believe so great a Man had made such an acknowledgment of Henry the IVth's Authority. But certainly his obeying that King's Summons to Parliament, and doing all that was required of the Lords, at that time, in order to their Admission, and Session in Parliament; and his sitting in that Parliament, where so many Acts of Richard II. and the whole Parliament of the 21st of his Reign was repealed, was much more: And whether he could be a Member of H. IVth's Parliament, and not a Subject of his Government, I leave to the Objector, and the Reader to determine.

The Remarker goes on. *The same may be said for Richard Scroop Archbishop of York, (here the Remarker cites his Declaration against K. H. IV. and saith upon it) would the Archbishop have thus lain before the People the heinousness of Perjury, and violation of Oaths, if he had sworn to K. Henry? If he had done so, he had been self condemned.* \* That I cannot help; the Remarker must look to that, but I doubt not, notwithstanding all he has said, to prove against him, that Archbishop Scroop acknowledged H. IVth's Authority, and was as zealous in his Service, as any of the rest of his Subjects.

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\* *Remarks p 17.*

\* He was one of those who went to the Tower to King *Richard*, to put him in mind of his Promise to quit the Government, and was constituted one of the King's Proxies to declare his Renunciation. † He assisted at the Coronation of K. H. IV. at which time, he *must take the Oath of Homage to him*. He assisted at the great Council || which K. H. IV. summoned in the first Year of his Reign, to demand Aids of the Lords Spiritual, and Temporal against his Adversaries, the Kings of *France*, and *Scotland*, who were making Preparations of War against him. In which Council this Archbishop of *York*, \* as well as the Archbishop of *Canterbury*, and other Bishops, granted the King a Tenth to support him in this War, which was undertaken by *Charles IX.*<sup>VI</sup> of *France*, in order to restore his <sup>Son</sup> Father in Law, *Richard II.* who was then alive ||. In the fifth Year of this King's Reign, the Archbishop's Name stands first in the List

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\* Collier Eccles. Hist. p. 606.

† Ibid. p. 609.

|| *Rymers Fœdera &c.* Tom. VIII. p. 125, 126.

*Memoranda de magno Concilio &c.*

\* Les Ercevesques de *Canterbiri* & stand foremost in the List of *d' Everwick* the Persons, who at this great Council granted the King Aid for this War.

|| Collier's Eccles. Hist. p. 613.



of the Privy \* Counsellors, who were commissioned to treat on the King's Part, with the Earl of Northumberland, about the Exchange of Castles, Lands, &c. The Remarker, it seems, knew nothing of all this, and therefore proceeds.

*And as he in all probability was a Non-juror, so doubtless were most of his Party, for it would have argued great weakness in him, to impart his great Design of restoring K. Rich. against Henry the IVth. in possession, unless his Partizans had been Men of the same Principles with himself, that is, either Non-jurors, or true Penitents.* † The Remarker here goes no higher than probability. Is not this at best, to give us Conjectures instead of History? He might e'en as well have taken the Natural Born Subjects short Historical way, who says, *that we must suppose the Opposers, whom, in the next sentence, he calls Non-complyers, were likewise Non-jurors, at least, some of them;* || but Supposals and History are very different Things.

But what does the Remarker mean, when he talks of Archbishop Scroop's great De-

\* Fœdera Conventiones, &c. Tom. 8. p. 364.

† Remarker p. 18.

|| Letter p. 40, 41.



*sign of restoring K. Richard*, who was murther'd five Years before this Design? For *Richard's* Death was in the first Year of K. H. IV. and the Archbishop's Conspiracy was not till the sixth Year of that King.

But let us now come to *the Archbishop's Party*, who, as the *Remarker* saith, were doubtless most of them *Non-jurors* too; and they were indeed much such *Non-jurors*, as the Archbishop himself. The Earl of *Northumberland*; his Son, the Lord *Piercy*; commonly called *Henry Hotspur*; his Brother the Earl of *Worcester*; the Bishop of *Bangor*; and the Lord *Bardolph* were, with the Archbishop, the Heads of the Party. The Earl of *Northumberland*, and his Son *Henry Hotspur* joyn'd H. IV. when he \* was Duke of *Lancaster*, immediately upon his landing at *Ravenspur* in *Yorkshire*, and march'd with him against K. *Richard*; went with Archbishop *Scroop* to that King, to put him in mind of his Promise to resign: Had † the Isle of *Man* given to him, and his Heirs, by K. *Henry* IV. to hold by the Service of carrying the *Lancaster* Sword at the Coronation of the King, and his Heirs;

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\* Collier Eccles. Hist. 601.

† Rymer's Fœdera Tom. p. 89, 90, 91. Ibid. 126.

and was made Constable of *England* for his great Services : || And at the great Council aforesaid, engaged to assist the King with ninety Men, and Twenty Archers. As for his Brother, the Earl of *Worcester* ; it appears by a Passage in the same great Council, that he was K. H. IVth's Ambassador to the King of *France* : And by the Subscriptions, in the Council so often mention'd, we find, that the Bishop of *Bangor* granted the King a Tenth, and the Lord *Bardolph* engaged to serve the King in Person, without Pay, in his War against *France*.

He adds, 'tis to be hoped, Mr. H. will not deny those Four to be Nonjurors, \* who, as mention'd by Stow, p. 32. opposed Henry the IVths. being made King, which they might very well do, and yet submit to him after he was so. Their Opposition to him before he was made King, is no manner of proof of their Non-submission afterwards.

Was not, † saith the Remarker, Owen Glendour, the famous Welsh Captain, who maintain'd a War against H. IV. in behalf of his lawful King, a Non-juror ?

The Remarker seems here to be in *Utopia*. Whom doth he mean, by this lawful

|| Rymer's *Fædera*, &c . p, 125, 126.

\* p. 19.

† Ib.

*King, on whose behalf Glendour maintain'd a War against K. H. IV? Doth he mean K. Richard II? He was dead before Glendour took Arms: Nay, before K. H. IV. went into Scotland, when Glendour, as Mr. Collier \* faith, took advantage of that King's Absence, and raised a Rebellion? Doth he mean then, Edward Mortimer Earl of March? He took the Field for Henry IV. against Owen Glendour, who made him Prisoner, as the same Historian observes. And, as both Sir John † Hayward, and Stow || tell us, put him in Irons, and cast him into a deep and vile Dungeon.*

*Owen Glendour's War, which the Remarker seems to justify, began with a Riot, and ended in Rebellion, which is the Name Mr. Collier gives it. And Stow, and Sir John Hayward give us both the occasion, and design of his Rebellion: The former takes notice, that \* he had a Controversy with Reginald Lord Grey of Ruthine, and because he was not favour'd in his Cause, he began first to spoil that Lord's Lands, &c.*

\* Collier Eccles. 614.

Ib. 678.

† Life of K. H. IV. 143.

|| Stow p. 327.

\* Stow p. 326.



And the latter \* gives him the Character of an ill Man, and saith, he and those Welsh that joyn'd him, design'd to recover their Freedom and throw off the English Government. And so much for the Remarkers famous Welsh Captain.

As for *Frisby* the Monk's Answer, it is not sufficient to prove he had never submitted, no more than Archbishop *Scroop's* Declaration proves he was a *Non-juror*. Besides, this was in the 3d. Year of *H. IV*th's. Reign, two Years after the Death of *Rich. II.* when there was no Claim set up against *H. IV.*

Well ! But if they were not *Non-jurors*, he will have them to be *Penitents*, as repenting of their rash and unadvised Oaths, and returning to their Allegiance, as a Test of their Repentance. † I answer 1st. The Remarker himself will not esteem those *Penitents*, that acted upon such Motives, as the Earl of *Northumberland*, and his Son Lord *Piercy*, and his Brother, the Earl of *Worcester* did, who, as *Holingshead* relates, in the Beginning of his Reign, were faithful Friends, and earnest Aiders of *K. H.* (and I have

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\* *Life of Henry IV.* p. 140.

† *Remarks* p. 19.



proved, they were so from Authentick Memoirs,) but began now to envy his Wealth and Felicity; and especially they were grieved, because the King demanded of the Earland his Son, such Scotch Prisoners, as were taken at Homeldon and Westmoreland, which they claimed as their Prize; \* (being the Kings Generals in those Actions.) I will not say, that all revolted upon the same Motives; but whatever were their Motives, that their Revolt was unjustifiable, I dare appeal to Mr. Collier; nay, to the Remarker himself.

Mr. Collier, after he had taken notice of the Earl of March's unfortunate Expedition against Glendour, in Defence of K. H. IV. adds, and tho' this Earl upon a Disgust for not being ransomed, engaged afterwards with that Welsh Gentleman, against the King: Yet it does not appear, that he set up any Claim to the Crown. And in the next Reign, when Richard Earl of Cambridge, who married the Daughter (it † should be Sister) of this Earl of March, form'd a Design to dispossess King Henry, and set

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\* Holingshead p. 521.

† Anne Wife to Richard Earl of Cambridge, was the Sister, not Daughter, of Edmund Mortimer Earl of March.

*the Crown upon his Father in Law's \* Head. The Earl of March was so far from asserting his Right, and abetting the Enterprize, that he immediately went to King Henry V. and made a Discovery. Now the Branches of March and York, letting their Claim sleep all this while; the Subjects had no reason to begin a War, or quarrel the Government in the House of Lancaster. † What then becomes of Bishop Merk, of Archbishop Scroop, with the Earl of Northumberland, and the rest of that Party, of Frisby, and all the Revolters of this Reign? It is certainly no small Crime for Subjects to begin a War with their Prince, and throw a Nation into Blood and Confusion, when they had no reason for it, and this was what they did, and what they had no reason to do, as Mr. Collier has stated the Case of this, and the next Reign, and he might have added of H. Vith's. Reign too. But all these Revolters the Remarker has produced, are condemned by his own Principle too, viz. That*

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\* It should be, Brother in Law's Head. Eccles. Hist. p. 678.

We have also this account of the Earl of March's discovery of this Conspiracy to King Henry V. in Stow, p. 346. But I often chuse to cite Mr. Collier's Ecclesiastical History, when I could cite other Historians, because the Remarker will not suspect, that Mr. C. has neglected that side of the Question, which he maintains.

*Kings de facto claiming as de jure, (as he says, all our Kings de facto did) is, if there were no other, a good Reason for the Subjects not refusing to swear Allegiance to them. And will he say, those Subjects had good reason to repent of Oaths of Allegiance, which they had good reason to take, and therefore good reason to keep? Or that they are true Penitents by revolting from such Oaths, and the Princes to whom they took them? Let him shew how they can be at the same time inexcusable Revolters, and true Penitents. And could he have produced Non-jurors, he had produced them only to condemn them, for refusing to take Oaths of Allegiance, which in another place, he says, they had good reason not to refuse.*

*The Remarker however, is so well pleas'd with his Argument on this Head, that at the end of his Book, he resumes it, and goes over again with these Non-jurors, in a List of Queries. He says in his Preface, I have at the end of the Remarks added some Queries, which may be of Use, and give light to some Passages in the Book; but I am aware, it will be said by some captious Readers, that I forget myself, because I propose some things by way of Queries, that were urg'd in the Remarks as Arguments to prove, that there were anciently such People, as we now*

E call



*call Non-jurors, &c. but I can assure them, there is no such matter. I did not forget my self, but did it designedly, and for reasons best known to my self, which I am resolv'd, I will not give. The Remarker saith, he will not give us his Reasons for adding these Queries, after he had told us a little before, that he added them, that they may give light to some Passages in the Book. These Passages do not want light, we understand them well enough, but strength; and that the Queries do not afford 'em. But whatsoever the Remarker's Reasons were for proposing these Queries, which he is resolved not to tell us, if the Testimonies I have given him, are not taken from Utopian, but English History, he had very good reason to have spared both his Remarks, and his Queries about Non-jurors of former Reigns. However, tho' he has, I shall not repeat the same things, for the Reply I have made to his Remarks, will be an Answer to all that is pertinent in his Queries.*

*I said that the Partizans of the House of York \* took Oaths of Allegiance to the three Henries; that the Heir of that Family, Richard Duke of York, had several times*

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*\* View page 5.*



*sworn Allegiance to King H. the VI. particularly, in the 29th Year of his Reign, and this I added, because no Body I supposed, would suspect that any would scruple to take Oaths to King Henry. VI. upon the score of a Person, who had himself sworn Allegiance to him. The Remarker doth not pretend to produce any one that refused the Oaths in this Reign; nor does he deny, that the Duke of York himself did swear Allegiance to King Henry VI. He only disputes the consequence, that I drew from his long Submission, and repeated Oaths of Fidelity, and faith, he did not by swearing give up his Right, which shall be consider'd in its proper place, the Question here, being only this, Whether he, and all the Partizans of that House, had lived in Subjection, and taken Oaths of Fidelity to King H. VI. which the Remarker grants. So that I have, I think, sufficiently made good what I asserted in the View, that it has been the custom and usage of the Subjects of this Realm to submit, and take Oaths to Non-Hereditary, as well as to Hereditary Kings; and the Remarker's fruitless Enquiries after Non-jurors in these Reigns, have only served for a further confirmation of this Assertion.*

Having proved this universal Submission; I added, that if the Subjects had thereby

acknowledg'd an Authority which the Laws condemned, we should then have found this Authority disowned in the succeeding Reigns of Kings *de jure*. But instead of this, we find Kings *de jure* in their Courts of Judicature, and their Acts of Parliament acknowledging this Authority, to which the Subjects before had sworn, and paid their Allegiance; for the truth of which, I appealed to the common Law, and statute Law of the Realm; to the *Year Books* for the one; and the *Statute Book* for the other: Which reduced this Controversy to matter of Fact.

From the *Common Law*, I produced several Cases, (I could have produced many more) out of the *Year Books* of the Reigns of Kings *de jure*, wherein their Judges declared, that all Pleas, Actions, &c. that were depending in the Courts of their immediate Predecessors, Kings *de facto*, were discontinued by their Deaths; in the same manner, as the Judges of Kings *de jure*, declar'd the Actions, &c. depending in the Courts of their immediate Predecessors, Kings *de jure*, were discontinued by their Deaths; and consequently hereby acknowledged, the Laws were as legally administred by the Authority of Kings *de facto*, as they were by Kings *de jure*. The *Remarker's* Answer to this is, that *these*  
Laws

*Laws had their Authority from the presumed Consent of the King de jure.* p. 32, 35.

*Claiming sub ratione Juris*, and the *presumptive Consent* of the King *de jure*, are the two Machines that have been invented to Salve this Hypothesis of Government. The former, as we have shewn, is of no use, because they have no ground to fix it on; and the latter is a meer *Chimera*. For is there in all these proceedings, the least Intimation of this supposed Authority, or presumptive Consent? Is every thing done by it, and yet nothing ever said of it? Are not these Proceedings at Common Law, a plain Confutation of it? The Laws certainly are administred, and legally administred by the Authority of that King, by whose *Demise* all Pleas &c. depending in his Reign, are legally discontinued. And did not the Common Law, as it was held, for Instance, in the Courts of *Edward IV.* declare, that all the Actions, depending in *Henry VIth's* Reign, were discontinued by his Dispossession and declared it for this reason, because it was a *Demise of the King*. Whereas, had the Laws been administred in *Henry VIth's* Reign, by the Authority of the *presumptive Consent* of *Edward IV.* before he was in Possession, why were not all Actions continued by the same Authority, after he was



in Possession? Why discontinued by the Demise of Him, by whose Authority they were not administred? It would have saved the Subjects much time, trouble, and expence to have had their Suits continued, and not to begin all anew upon *Edward IVth's* coming to the Throne. But how much soever this would have tended to the publick Good, (which is the case where they set up this Authority of a presumptive Consent) the Judges of *Edward IVth's* Courts knew nothing of this Authority; and therefore declared, according to the Common Law of this Realm, that all the Proceedings at Law were discontinued by the Dispossession of *H. VI.* because it was a *Demise* of the Crown. For from the several Cases which I alledged, I observ'd that the Law makes no difference betwixt the Death, or dispossession of a King; but holds the latter, as well as the former, to be a *Demise* of the King, and that, whether he was a King *de jure*, or *de facto*.

Against the Authority of *Bagot's* Case, he urges from the Author of the Case of Allegiance to a King in Possession. *That Bagot's Counsel in their Plea do not urge the validity of a King de facto's grants without a Limitation, that it be no Injury to the Legal Right of the Crown, and thence supposes,*  
they

they are not valid against a King *de jure*. In Answer to which, I must take notice, that the words here are not truly translated by that Author, for the Limitation is to such Grants of a King *de facto*, *que ne fuer en menysbement de son Corone*, which were not to the minishment of His Crown, calling it at the same time, the King *de facto*'s Crown. 2dly. This Limitation of Grants doth not respect the Rights of any Person; but the Rights, Lands, Honours, and Dignities of the Crown it self. Which Limitation held as well in Grants made by Kings *de jure*, as in those made by Kings *de facto*. As far as those Legal Rights of the Crown were prejudiced by them, so far they were invalid. And therefore in the ancient Oath, taken by the Kings of England at their Coronation, the King swears, *that he shall keep all the Lands, Honours, and Dignities, righteous and free of the Crown of England in all manner holy without any manner of Minishments*, (the word used in *Bagot's Case*,) *and the Rights of the Crown hurt, decay or loss to his Power, shall call again into the ancient Estate &c.* This Clause of the Oath, \* fully explains the limitation of Grants in *Bagot's Case*, and may at the same

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\* It is the first Oath in the Book of Oaths.

time serve for an Answer to what is urged by the *Remarker*, in the next Page from *the Case of Allegiance*, and by the *Natural Born Subject*, \* concerning *Henry II's* Revocation of *King Stephen's* Grants † of *Crown-Lands*.

I observ'd, it was urg'd as Law by *Bagot's* Council, *that if he that is now King* (meaning *Edward IV.* and implying he was not King then) *had in King Henry the VIth's* Reign granted a *Charter of Pardon*, *it would be void* Now, for every one that grants a *Charter of Pardon*, must be King in fact; and that the Author of *the Case of Allegiance*, leaving out, probably by an Oversight, the Particle *Now* in his Translation of those Words, would have them signifie no more, than that a *Pardon granted by Edward the IV. when out of Possession, could not have its Effect, and be pleaded and received in Court, whilst out of Possession, for want of Power to enforce it.* In Answer to which, I observ'd, that *Bagot's* Council did not say, if *Edward IV.* had granted such a *Pardon*, before he was in Possession, it would have been void in *Henry VIth's* Reign, whilst he was

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\* *Remarks* p. 34.

† *Letter* p. 37.



out of Possession, (that might indeed be for want of Power,) but it would be void *Now* in the 9th Year of *Edward* the IVth's Reign, when he is in Possession, and the whole Power of the Kingdom in his Hands; and was therefore void in Law, not void for want of Power to enforce it. What says the *Remarker* to this? Why, he repeats the Objection without taking any notice of my Answer to it, and roundly affirms, *it was void for want of Power, and for no other reason.* \* *i. e.* he understands the Law better than it was understood in *Edward* the IVth's Court. He may think so. In the mean time however he must grant, that his Author was mistaken in the Translation, and in the point of Law that was maintain'd in that Court. But what Authority doth the *Remarker* oppose to it? None at all: Nor any thing, but an inconclusive Argument of his own, *That a Prince who had granted a Pardon to a Subject, when out of Possession; would not after he came to the Throne yield, that he should be tryed, condemned, and executed; because he was out of Possession, when he granted it.* † It is very likely that he would not. But doth

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\* *Remarks* p. 35.

† *Remarks.* p. 36.

it therefore follow, that the Subject is *Rectus in Curia*, and pardon'd in Law? It certainly doth not; for tho' the Prince will not suffer him to be executed; and tho' the Pardon which was granted before he was in Possession was void; yet this Disjunctive admits a *medium*, which is, that he may, and probably would, grant a new Pardon now he is in Possession, to secure him.

I observ'd, that as the opposite Council did not deny any one of those Points to be Law, which were maintain'd in the Plea for *Bagot*: So *Billing*, who was Lord Chief Justice of the *King's Bench*, deliver'd his Opinion agreeably to it, and after he with the rest of the Judges of that *Bench* had consulted with the Judges of the *Common Pleas*, who agreed with them, the Court gave judgment for the validity of *Bagot's* Patent, *i. e.* for the Royal Jurisdiction of the *King de facto*. There are, as I said, a multitude of Cases where the same Authority is acknowledged. It was never disputed but in *Bagot's* Case, and there, as we see, judgment given for it. None of these things are denied by the *Remarker*, and he is sensible they are against him, and therefore calls them *Pretended Authorities out of my Year*  
\* *Books*. Why *Pretended Authorities*, are

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\* *Remarks* p. 32.

they not in the Year Books of the Reigns of Kings *de jure*? But these too it seems, are *Pretended* Authorities when they do not suit with the *Remarker's* Hypothesis.

\* He says, he owns and knows no one that denies, *that the Crown takes away all manner of Defects and Stops in Blood*, to be a Maxim of the Law; but then he would restrain it to Hereditary Kings without any Authority, nay, against the Authority of all the Judges of *England*, who, as I observed in two famous Cases, have applied this Maxim to Non-Hereditary Kings, to which having nothing to answer, he takes sanctuary † in his Maxim *sub ratione juris*.

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## C H A P. II.

*Being a Defence of the second Chapter of the View.* That the Sovereign Authority, particularly, the Legislative Authority of Kings for the Time being, and their Two Houses of Parliament, is acknowledged by the Statute Law of this Realm.

**H**AVING towards the End of the first Chapter of the View, proved by the

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\* *Remarks* p. 37.

† *Remarks* p. 38.



Common Law of this Realm. That the Legislative Power is lodged in the King's for the time being, and their Two Houses of Parliament. In the second Chapter, I proceeded to prove the same, by the Statute Law of this Realm.

For the Legislative Authority being essential to the Supreme Authority and inseparable from it, (since no Power that is less than the Sovereign Power can give Laws to a Community,) if I could make it appear, that Kings *de facto*, with their Two Houses of Parliament, had the Legislative Power of the Realm, this of it self would be a decisive Argument in this Controversy, and the *Remarker* himself at the latter end of the Book, where he resumes this Question, owns, that *the whole Cause depends upon the*  
\* *Legislature.*

The Argument, which I urg'd in maintenance of the Legislative Authority of these Kings, was this, That Hereditary Kings and their Parliaments, have cited the Laws made by Non-Hereditary Kings and their Parliaments, in such a manner, as acknowledges them to be Legislators equally with themselves, or any of their Progenitors.

The *Remarker* acknowledges, *the Acts*

\* *Remarks* p. 100.

*made under Kings de facto to be Statutes, and Laws of the Land, but not by the Authority of Kings de facto, but by the Allowance, and presumptive Consent of the King de jure.* \* At the latter end of his Remarks, where he resumes this Subject, he doth not deny those *Laws are in force; but denies, that they derive their Force from the Authority of those that made them.* This he repeats over and over again, as often as he has occasion, to speak of the Laws of Kings *de facto*. So that the single Question betwixt us is, whence these Laws derive their Force, whether from the Authority of the Kings and Parliaments that enacted them, or from *the presumptive Consent*, as he says, *of Kings de jure.*

And 1st. It is to be observed, that altho' the *Remarker* owns them to be Laws, yet he knows not what to call these Laws. *Statute Laws*, he durst not call them; for he saith, *they were not Laws of England, be-*

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\* *The Natural Born Subject agrees with the Remarker. There was a necessity, saith he, not to vacate the judicial Proceedings in the Reigns of H. IV. V. VI. and this could not be done without allowing the Acts of Parliament upon which the judicial Proceedings did depend, and those Acts being good in themselves, so far as they related to the Subject, the lawful Kings when they came in, were willing they should be continued.* Letter p. 43.

Remarks p. 40.

P. 101.

*cause made by Kings de facto, but because the King de jure, without the formality of a Confirmation, suffer'd them like our Common Laws, by usage to become Laws of the Land, being for the benefit of his Subjects, and again, they may obtain the force of Statute-Laws made by Kings de jure, by use as Cannon Laws \* do. Are they then Common-Law? No, he durst not affirm that neither, nay, he yields to the Truth of what I affirm'd, that tho' Customs are sometimes by Act of Parliament turn'd into Statute-Law; yet Statutes are not turned into Common Law or Custom, and adds, the Objector doth not say, that these Statutes of Kings de facto, receive their Authority from immemorial Custom: and yet he himself saith, that Kings and Parliaments, by reciting them in their Statutes, and suffering them to be pleaded in Westminster-Hall, have given them the strength of Immemorial Custom, i. e. have made them as good Laws as others, even our Common Laws, which are so by immemorial † Custom.*

*So that here's a 3d. sort of Laws not known in Westminster-Hall. They are not Statute-Laws, but have the force of*

\* Remarks p. 38, 39.

† Remarks p. 40.



*Statute-Law*: They do not receive their Authority from immemorial Custom, but have the strength of immemorial Custom, and are not Common, but as good as our Common Laws. To repeat this Hypothesis, is to confute it. It is a sort of a Riddle, at least, it puts me in mind of the famous *Ænigma* of *Ælia Lælia Crispis*, *nec mas nec femina, sed omnia*. These Laws, which he at the same time owns to be in Force, are neither Statute Law, nor Common Law, and yet they are both: They partake of the strength of both, and are neither. They are no Laws as they are made, and yet for use, are all Laws, *i. e.* they are *presumptive*, they are *Hypothesis-Law*.

But 2dly. The *Remarker* is not only at a loss to know under what Class to reduce these Laws, at the same time that he owns them to be in Force; but leaves us at as great an uncertainty to know which of them are in Force. When he affirms, that these Statutes do not derive their Authority from the Kings and Parliaments that enacted them, but from the Authority of Kings *de jure*, could he have produced an Act of a King *de jure*, and his Parliament in confirmation of these Statues, (which alone could have given them Authority, had they had none originally) we should then have known

known which of these Laws were in Force; because we should have known, which had been confirmed. Or, could he have produced some exprefs publick Consent, given some other way by Kings *de jure* out of Parliament, tho' this would not have made them Laws of the Realm, if they had not been so before, yet we might have known, at least, according to this Hypothesis, which of these Statutes had been in Force; because we should have known to which such an exprefs Consent had been given. But when the *Remarker* derives the force of these Statutes, not from any exprefs and publick, but from a secret Consent, that we are to presume on, or guess at; He has left us no way to know which of these Laws are valid, and which are null.

The restriction, that the † *Remarker* adds to the validity of these Laws, that *they be not in diminution of the Crown, and for || the benefit of the Subject*, is so far from ascertaining their Obligation, that it leaves it still more doubtful; for as every Man before was left to guess at the Prince's Consent, so here Men are made Judges

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† *Remarks* p. 41.

|| *Remarks* p. 41.

of what Laws are to the diminution of the Crown, or against the publick Good; of which different Men, as well as different Parties, having entertain'd different Notions, those Laws which are obligatory with some, would be esteemed Nullities with others. The safety of the Prince, the Peace of the Community, the Lives, Liberties, and Fortunes of the Subjects depending on the Laws, nothing ought to be more certain, and better known than their Obligation (to which therefore Promulgation has ever been held to be essential) whereas nothing is more obscure, uncertain, and precarious, than is the obligation of Laws by this Hypothesis, which leaves it in the dark, and makes it all over Guess, and Presumption.

Some, who have not thoroughly consider'd this matter, may wonder, how these Persons ever came to take up with so precarious an Hypothesis. But the truth is, they did it not on Choice, but were driven upon it by necessity. For not being able to deny the validity of the Statutes of Non-Hereditary Kings, and yet not knowing at the same time, how to acknowledge their Legislative Authority, without destroying their Cause, they were forced to look out for some Authority of Kings *de Jure*, for these Laws: But not finding any Confirmation, or

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publick



publick express Consent given to these *Laws* by such Kings, either in Parliament, or out of Parliament; there was no other way left, but to presume on their secret Consent to give Authority to them.

But this Notion of a *presumptive Consent* giving Authority to *Laws*, is as great a Secret, as the secret Consent it self. The *Remarker* agrees with me, that *Kings and Parliaments, Judges, and Lawyers have owned these Laws to be in Force*; but he has not been able to produce one Act of any King, or Parliament, or the Opinion of any Judge, or Lawyer, that ascribes their force to this Presumptive Consent. No, he flies to the Case of one *Barbaricus*, a subordinate Officer in the Roman State, which is no ways parallel to the Case before us, either in the Reason, or the Circumstances of it; and which proves nothing, but that the English Law-Books afford him not the semblance of any Authority. And what can be more absurd, than to derive the validity of so great a part of our Statutes from a presumptive Authority, which neither the Statute Book, nor any Law-Book doth acknowledge, nor take the least notice of?

4thly. This Legislation of the presumptive Consent, is not only utterly unknown to our *Laws*, but utterly inconsistent with them.

them: For it resolves the Legislature, which by our Constitution is lodg'd in the King, or Queen, and the Two Houses of Parliament, into the sole Will of the Prince; and that (which makes it as ridiculous, as it is illegal) into his secret Will.

5thly. All the Lawyers, Judges, Kings, and Parliaments, who have owned the validity of these Statutes, have at the same time acknowledged the Authority of the Kings, and Parliaments that made them. They have not pleaded them, nor recited them in Acts of Parliament as Statutes in general, nor as Laws that obtain'd their force by Custom, or presumptive Consent: But they pleaded, and recited them as Statutes of the Realm, enacted by such Kings in their Parliaments holden at *Westminster*, or elsewhere, in such a Year of their Reigns. Of such Recitals, I have given several Instances in the 11. Chapter of the View, which the *Remarker* saith, *might have all been spared*; and so it was indeed necessary they should have been spared, that his Hypothesis might be spared, these Recitals being so many Demonstrations against it. For by these Recitals it appears, that at the same time those Kings and Parliaments acknowledge the validity of the Laws, they acknowledge the Authority of their respective Legislators:

may they acknowledge no other validity in those Laws, than what is derived from the Legislative Authority of those Kings and Parliaments that enacted them. And this they do as fully acknowledge (for they acknowledge it in the very same Terms) as they do the validity of the Statutes, and the Legislative Authority of any of their *de jure* Progenitors.

I referr'd to Laws made by Kings *de facto* in favour of the Subject, which had been afterwards intrenched on by the Prerogative of Kings *de jure*. Now if the Laws of Kings *de facto* were null in themselves, and had no Authority, but what they received from the consent of succeeding Kings *de jure*; then the Awards, and Proceedings of a King *de jure*, in opposition to the Laws of a King *de facto*, would be legal. But such Awards, and Proceedings have been declared by a King *de jure*, and his Parliament, to be illegal. Whence it follows, that the Laws of Kings *de facto*, are so far from receiving their Authority from the presumptive Consent of Kings *de jure*, that they are valid even against a King *de jure*'s express Dissent to them. See the I. Rich. III. ch. 2. and the *Petition of Right* 3. Car. I. But these Instances, as well as all the Recitals, the *Remarker*, and the *Natural Born Subject* wisely pass over.

When



When the *Remarker* has not been able to give the least shadow of a proof from our Laws, or Law Books, for this *Chimera* of a presumptive Consent; I may be allowed to pass over his inconclusive Reasons, *why the Statutes of Kings de facto should remain in Force, and yet the Authority of those Kings not be acknowledged.* Only one of his Reason, I shall take notice of, because he repeats it, and lays great stress upon it, *viz. That Kings de jure suffer the Laws of Kings de facto to be in Force, because 'tis not safe to unravel things too far, to un-binge the Government, and to divest them of Laws they have been used to, and chose themselves.* \* But supposing, as the *Remarker* doth, that such Laws had originally no Authority, to give them Authority by Act of Parliament, would be so far from *unravelling things, and divesting the People of their Laws*, that it would have been the only way to fix every thing, and secure their Laws to them. And one Act of Parliament in the beginning of *Edward the IVth's* Reign, for instance, which a Committee would have drawn up at two or three Sittings, would have confirmed all the Laws made by the Three Kings of the

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\* *Remarks* p. 40, 104.

House of *Lancaster*. And there can be no reason why this Confirmation was not given, but because *Edward IV.* his Parliament, and Judges, knew they were valid without it. For when there has been reason to doubt of the validity of Acts of Parliament, it has been always thought fit to confirm them. As the Acts made 12. *Car. II.* because that Parliament was not call'd by the King's Writs, were all enumerated, and confirmed in an Act pass'd 13. *Car. II.* ch. 7. Entitled, *An Act to confirm publick Acts.* The *Natural Born Subject*, with great Assurance, asks me, *can you give one single Instance out of all our Records of any Act of Parliament made by a Rightful \* King that ever was confirmed for want of sufficient Authority?* Here's one Instance for him, and a famous one; and he may find another 13. *Car. II.* ch. 13. But neither He, nor the *Remarker*, have been able to produce one publick Act, of all the numerous Acts that were made by the Three Kings of the House of *Lancaster* in 60. Years, that was confirm'd by *Edward IV.* or esteemed to want his Confirmation, (those few private Acts which were confirm'd, were confirmed for private Reasons) for without it, they were held to

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\* *Letter p. 49.*

be of as good Authority, as his Own Acts. But the *Natural Born Subject* will have it, *that they are still liable to be question'd*. What! liable to be question'd by Law? By his, and the \* *Remarker's* Hypothesis-Law; they may be liable to be question'd: Not by the Law of the Realm: No, not as it was held even in the Courts, and by the Judges of *Edward* the IV. for when it was urged, that *Bagot's* Patent of Naturalization granted by *Hen. VIth* was not good; because Patents of Naturalization were not confirmed in the Act of the 1. *Ed. IV.* ch. 1. which was made to confirm the judicial Proceedings of the Three *Henries*; This Plea was rejected, and judgment given for the validity of *Bagot's* Patent of Naturalization, which stood solely upon *Henry* the VIth's Authority. As this judgment of *Edward* the IVth's Judges may convince the *Natural Born Subject*, that the Doctrine he lays down with so much Assurance, *that such Acts, unless confirm'd, were still liable to be question'd for want of sufficient Authority*, is not Law: So is it a full Determination against His, and the *Remarker's* presumptive Consent-Authority; for here was no Room left to presume on *Edward* the IVth's Consent

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\* Letter p. 48.



to this Patent, since he had left Patents of Naturalization out of that Act, wherein he gave his exprefs Consent to such Acts of the Three *Henries*, that he would have stand: And yet this Act by *Henry* the VIth's Authority, which had not *Edward* the IVth's Consent, was held valid without it, as valid as those that had it, or as any of his own Acts.

The *Objector* according to this Notion of the presumptive Consent-Legislation, said *Richard III. Acts of Parliaments pass'd for Laws, because H. VII. was willing they should pass for Laws.* To convince him of his Mistake, I instanced in two Acts of Parliament made by *Richard*, One which bastardized *Edward* the IVth's Children, Another that attainted *Henry* the VIIth's Friends, which (the last especially) *Henry* the VIIth was certainly not *willing* should pass for Laws: Nay he was *unwilling*, as my Lord *Bacon* observes, so much regard should be paid to *Richard's* Attainders, as to have them formally repealed. And yet when the Judges were consulted, they unanimously declared, that the Persons attainted could not take their Places in Parliament, until their Attainders, tho' passed by a King *de facto*, were reversed by Act of Parliament.

The Author of *the Case of Allegiance* having said, that these Attainders were reversed,

versed, not because they were valid, but out of *Caution*. I observed, that the reason the Judges gave for the Reversal, *that they were not legal Persons, till their Acts of Attainder were reversed*, shews, that it was not *Caution*, but the *Constitution that required it*. Upon which the *Remarker* says, *what Mr. H. drives at, I know is this, that the Attainder of a de facto, must be reversed, otherwise the Person attainted, is not a Legal Person*. \* Mr. H. only cited the unanimous Resolution of all the Judges, who declared, that the Persons who were *attainted by Richard III. King in Fact, and not of Right, were not Legal Persons till their Attainders were reversed*. Which, saith the *Remarker*, is a gross Mistake, and they were reversed only out of abundant *Caution*. What, notwithstanding the King and Parliament proceeded agreeably to the Opinion of the Judges? Yes, notwithstanding this, He says, *it is a gross Mistake*, that is, the King and Parliament, and all the Judges of the Realm, were of One Opinion; and the *Remarker* is of Another. By which Authority are we to be concluded?

But the *Remarker* has another Answer,

\* *Remarks* p. 46.

*Ibid.*

P. 48.

*that*

*that the Judges knew H. VII. had no Right.* If one should ask him, how he knows that the Judges knew this, he would be hard put to it to prove it. However, let us for once grant that they might believe so, and then he will be distressed by the Judges Resolution of the second Question, touching the King's Attainder, *that the King [Henry VII. whom the Remarker says, they believed, had no Right] was a Person able and discharged of all Attainders, and Disabilities ipso facto, that he was invested with the Regal Dignity, and was King, and thus all the Objections against his Person, or his Title, from Attainders, or other stops, and defects of Blood, were entirely removed: So that let the Remarker take which side of the Question he pleases, that H. VII. had a Right antecedent to his Possession, or that he had not; one of the two Resolutions of the Judges, is directly against him, and neither of them for him. If he says, H. VII. had a Right antecedent to his Possession; their first Resolution concludes against him. But if he says, he had no antecedent Right; their latter Resolution is decisive against the Remarker, and for the Sovereign Authority of the King for the time being.*

Towards the latter end of the Book, where the Remarker resumes this Argument, he  
makes



makes an objection to the Legislative Power of the Three *Henries*, from the 1. *Edward IV.* ch. 1. where he calls them *pretensed* Kings, and other Statutes where he calls them Kings *indeed*, and not of *Right*; but this Objection was obviated by what was said in the view, as the *Remarker* might have observed, but since he did not, I must repeat part of it.

1<sup>st</sup>. Whenever *Edward IV.* cites the Laws of the House of *Lancaster*, he always gives them the Title, of *late Kings of this Realm in Deed, and not of Right*; whereby he owns them to have been Kings of this Realm, but withal, that they ought not to have been so. Nay, he doth not even now pretend, that his great Uncle, *Edmund Earl of March*, or his Father *Rich. Duke of York*, according to the *Remarker's* Hypothesis, were Kings of Right during the time, that the Three *Henries* were Kings in Deed. Neither He, nor his Parliament, nor Judges, ever imagined, (as the *Remarker* and *Natural Born Subjects* do,) that the unpossessed, unrecognized Heirs were Kings *de jure*, subsisting at the same time, that others were Kings *in Fact*. But notwithstanding this abatement of Title, whenever *Edward IV.* cites their Laws, he acknowledges their Legislative Authority to be equal to that of any of his Predecessors, and challenges no  
other

other Authority for his own Laws, *than he owns theirs bad, and ought to have \* bad.*

2dly. As we never meet with this distinction of Kings in *Deed*, and *not of Right*, throughout all the Revolutions of Government, till in this Statute of *Edward IV.* So it is to be observed, that it is in the Statutes only of the immediate Rivals and Successors that we meet with it, but never afterwards. It is only in the Statutes of *Edward IV.* that the *Three Henries*; and in those only of *Henry VII.* that *Richard III.* is stiled King in *Deed*, and *not of Right*. In the Statutes of all the succeeding Kings and Queens, the *Three Henries*, and *Richard III.* are stiled Kings of *England*, without the least diminution of Title.

3dly. At common Law, in the Courts even of their Rivals, the Regal Title is constantly given them without any Abatement. Whenever *H. VI.* is mention'd in the Courts of *Edward IV.* the same Title is given to him, that is given to *Edward IV.* when He is mention'd in the Courts of *Edward V.* When *Henry VI.* is mention'd in the Courts of *Edward IV.* He is styl'd *l'auter Roy*, as *Edward IV.* himself is stiled *Roy qui ore est.* All the difference betwixt them is, One, is

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\* See 14. *Edward IV.* ch. 2. printed at the end of this Book.  
the

*the late King* ; and the Other, *the present King*. The same stile is observed in the Courts of *Hen. VII.* when *Richard III.* is named.

Another Objection has been drawn by consequence from the *Attainders*, and the Language of them ; which, as I had said, was no confutation of those full and direct Proofs, which I had made of the Legislative Authority of the Kings for the time being. Nor could the *Objector*, with whom I was then engaged, say they were : Who acknowledged both *H. VI.* and *Edward. IV.* to be in their Turns, Kings and Legislators, notwithstanding their mutual *Attainders* of each other. Nay, the *Remarker* himself p. 44. says, *as for Attainders there is no great stress to be laid upon them, because they are used on both sides.* However, towards the end of his Remarks, not knowing well what else to lay a stress upon, he is for laying a very great stress upon the *Attainders*. But before he had done this, he ought to have consider'd.

1st. That the very same Parliament, that attainted *Richard III.* did however, as I have observed already, so fully acknowledge his Legislative Authority, that they had, as we have seen, no other way to relieve the Persons who lay under the Penalty of his



his Acts of Attainder, but by repealing them. They did not say, with the *Remarker*, and *Natural Born Subject*, that they were not Kings, nor Legislators; that their Acts were Nullities, or had no legal Effects: No, they expressly acknowledged they had such legal effects, as could not be vacated, but by an Act of Parliament: Which plainly shews, that whatever other Consequences may be drawn from the Attainders of these Kings, there can be no consequence drawn from them, that will affect their Legislative Power.

2dly. That, as an antecedent Attainder cannot touch a Prince in his subsequent Exercise of the Regal Power: So for the same reason, a subsequent Attainder cannot affect a Prince in the Exercise of his Regal Power antecedent to the Attainder. And for both these, I have produced undeniable Authorities, to which the *Remarker* has given no other, but the thred-bare Answer of *sub ratione juris*.

3dly. The *Remarker* has affirmed, but not proved, that these Kings were attainted for their Exercise of the Regal Power. *Henry VI.* was not, as he supposes, p. 70. attainted by *Edward IV.* for that reason, but for the Death of *Richard Duke of York*, at the Battle of *Wakefield*. And as the *Remarker* may  
see

see, by what hath been said, what unjust Consequences he draws from the Language of the Attainders: So there needs nothing more to convince him of the Injustice of this Attainder, than the History of it as it is related by the Author of the *Ecclesiastical History*, which I have so often cited. After this Author had given some account of the Agreement made in Parliament between King *H. VI.* and *Richard Duke of York*, he adds, *the Duke of York's next Point was to secure the Queen. This Lady, he had reason to imagine, would not sit down tamely, and see her Husbands Royalty Eclipsed, and her Son disinherited without some Attempt for their Recovery. To prevent being embarras'd from this Quarter: The Duke prevail'd with the King to send for the Queen, and her Son to London. The Queen instead of obeying the Order, levied an Army in the North, under the Command of the Dukes of Exeter, and Sommerfet. The Protector (for so the Duke of York had got himself made in Parliament) receiving Intelligence of this Preparation, leaving the King under the Guard of his \* Friends, the Duke of Norfolk, and the Earl of Warwick, march'd down with a small Force to Wakefield, where fighting rashly at a great Disadvantage of Numbers, he*

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\* i. e. The Duke of York's Friends.

*lost his Life and the Battle.* \* Now it was for the loss of the D. of York's Life, that H. VI. was attainted in the first Parliament of Edward IV. And therefore our Ecclesiastical Historian goes on, *in this Parliament Margaret the late Queen, Edward call'd Prince of Wales, and several others, were attainted for the Death of Richard D. of York. And which is more remarkable, the Act of Attainder pass'd upon the late King Henry the VI.* † So that H. VI. you see, was attainted, not for his past Exercise of the Regal Power, but for the Death of the D. of York. Wonderful Justice! attainted for the Duke's Death, who was slain at Wakefield, when H. VI. was a Prisoner at London; and slain by an Army, that was raised not only without, but against his express Order; for H. VI. even by this Account, was so far from giving any Encouragement to his Queen's Attempt, that he commanded her to come to London with her Son, and acquiesce.

It will not be improper here to answer an Argument of Prinn, and the Remarker, *That Richard Duke of York was King de jure, tho' never in Possession, because Per-*

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\* Collier's Ecclesiastical History p. 677.

† Ibid. 679.



sons were attainted of High Treason for his Death; but these Attainders are no proof, that he was King *de jure*; for the Attainders were founded on the Act of Parliament 39. H. VI. by which Richard was declared Heir apparent of the Crown, and it was made High Treason to compass his Death: and therefore the Lord Chief Justice Coke says, if the Heir apparent to the Crown be a collateral Heir apparent, He is not within the Statute of the 25th Edw. III. untill he be declared by Parliament, as it was in the Duke of York's Case. †

Lastly, This Attainder, as well as another posthumous Attainder of Henry VI. were reversed i. Henry VII. wherein it is declared, \* that the King, our Sovereign, remembring how against all Righteousness, Honour, Nature, and Duty, an inordinate seditious and slanderous Act was made against the most famous Prince of Blessed Memory, King Henry his Uncle, at the Parliament holden at Westminster the fourth day of November in the 1st. Year of the Reign of Edw. IV. late King of England, whereby his said Uncle contrary to the due Allegiance, and

† Coke's Inst. Part. 4. c. 1. p. 7.

\* In the unprinted Rolls i Hen. VII. N. 16. Restitutio Henrici Sexti.

all due Order was attained of High Treason. Wherefore our Sovereign Lord, by the Advice and Consent of the Lords, &c. ordaineth that the same Act, and all Acts of Attainders, Forfeiture, or Disablement, be void, annulled and repealed, and of no Force, nor Effect. This was the last Act of Parliament, relating to this Attainder of Henry VI. which gives us an Idea of it, very different from what the Remarker has given, and leaves these Attainders without any force to bear the great weight he lays upon them.

I observ'd, that when Princes proceeded against any Persons for adhering to the King for the time being, their constant way of proceeding was by Acts of Attainder in Parliament *ex post facto*, and not by Indictments in the ordinary Course of Proceedings; which shews, that to serve the King in Possession, was not a Fault, nor could be punish'd as such, by the Laws that were then in Force. The Remarker doth not deny the the Fact, but saith, the true reason why they were attainted, and not tryed as other Malefactors, was because they were such notorious Rebels, that they ought to be made Examples of, by an extraordinary way of proceeding to deter others from the like; \* but

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\* Remarks p. 47.

not for want of *Laws in Force against them.* He has not yet proved, that to serve the King for the Time being makes Men notorious Rebels, or Rebels at all; nor by what Law they can be convicted of High Treason for doing that Service. But to pass by that and come to his Argument: Were there ever more notorious Traytors, and Rebels in this Nation, than the Gun-powder Conspirators, and the Regicides of 48? And yet both the former, and the latter were convicted, in the ordinary course of Proceedings, by Indictments on the 25. *Edward III.*

The *Natural Born Subject* denies the Fact, saying, *this was not the constant way of proceeding; for many were put to Death without Attainders: The Duke of Sommerfet, and several other Lords, and \* Gentlemen were put to Death without Attainders, by Edw. IV. for fighting for Henry VI.*

There were Executions indeed, as I took notice, in the Heat of the Victors Rage, without any Colour of Process; and I said, that some of the Attainders were no more to be drawn into consequence, than those Executions: And if this be what the *natural born Subject* means, when he says there

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\* Letter p. 95.



were Persons put to Death without Attainders, he says true, but trifles at the same time; for this is still a more violent Course than Attainders themselves. But if he means, the Duke of Somerset and the rest were put to Death upon a Sentence after a Conviction by a Jury, in the ordinary Course of Proceedings by Indictment, why did he produce no Testimonies from History in Proof of it? If this Author expects to be believed without Authorities, yet it is too much to believe him against Authorities. Now Stow relates the Matter thus. *After the Battel of Tewksbury, King Edward entering a Church in Tewksbury with his Sword drawn, a Priest brought the Sacrament against him, and would not let him enter until he had granted his Pardon to these that follow; Edmund Duke of Somerset, Strother Lord St. John's (whom the natural born Subject splits into several other Lords,) Sir Humphrey Audley, and twelve more. All these, where they might have escaped, tarried in the Church, trusting in the King's Pardon, from Saturday till Monday, when they were taken out and beheaded.\** Sir William Dugdale, in his Account of this Duke of Somerset, saith, that notwithstanding

\* Stow in Edward IV. p. 44.

† Coke's Inst. Part 4. c. 1. p. 7.

ding he fled from the Battel of Tewksbury, he was overtaken and there lost his Head. Some say that he got into the Church for Sanctuary and there was killed, Leland's Itinerary Vol. 6. 93. And will the natural born Subject call this putting Men to Death in the ordinary way of Proceedings? *Hollingshed* indeed makes mention of a Trial of the Duke of *Sommerſet*, &c. And ſuppoſe we ſhould take his Account of this Matter, rather than that which is given by the other Hiſtorians (which is not reaſonable) yet even this I think will do the natural born Subject no Service; for *Hollingshed* tells us, what Perſons ſat as *High Conſtable*, and *Earl Marſhal*; which plainly ſhows, that if there was any Trial, it was before a *Court Martial flagrante Bello*, where abſolute Power, and not the Laws of the Land take place, and which is as far from the ordinary Courſe of Proceedings, as that of Attainders.

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\* *Dugdale's Baronage Tom. 2. p. 125.*

## C H A P. III.

*A Defence of the third Chapter wherein  
some other Objections to the Legislative  
Authority of these Kings are answer'd.*

**T**HE Objection from *Edward IVth's* Confirmation of a few *private Acts* I have answered in the foregoing Chapter, and turned it upon the Remarker, in that there was not one of the numerous *publick Acts* that were made in the Reigns of the three *Henries* ever confirmed, and yet stood, and, except such of them as have been repealed, do stand in Force to this Day. But the Remarker says, that *King Edward IVth's Non-repealing their Acts, was sufficient to give them the Force of Laws, being beneficial to the Subject.* This is but his *Crambe* of presumptive Consent in other Words, and as he has express'd it, he might with as much reason have said, that a Falshood, by not being contradicted, becomes a Truth; or that the many Errors of the *Remarks* and the *Letter* would, if they had not been confuted, have commenced so many Truths, as that the *Non repealing of an Act*, which was originally null, gives it the Force of a Law.

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\* Rem. p. 51.



As for their Laws *being beneficial to the Subject, and for the publick Good*, to which he partly ascribes their Obligation (for he knows not well where to place it) this he often repeats, without taking the least notice of what I had said in Confutation of that Notion, or giving any Account how those Laws which were not for the publick Good, but prejudicial to it, came to be in Force, and to continue in Force in the Reigns of their Rivals (and they continued in Force till they were repealed) as well as their most beneficial Statutes.

Instead of considering the Answers I gave to the Objection that is drawn from the Revocation made 21 *Richard II.* of the Confirmation of the Judgment against the two *Spencers* 1 *Edward III.* he has referred me to a learned Author, who had not himself consider'd those Arguments I offer'd.

And as before I gave the Lord Chief Justice *Cokes's* Opinion for the Validity both of the Judgment against the two *Spencers* 1 *Edward III.* and of the Repeal of 1 *Henry IV.* of the Revocation of that Judgment 21 *Richard II.* So let the Remarker try where he can name any Lawyer of note that has been of a different Opinion; nay, let him look into the Statute Book, and see whether all

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\* Rem. p. 41.

the Statutes made 1 *Ed. III.* whilst his Father was alive, are not this day in Force, (as one of them is cited for a Law of this Realm 16 *Car. I. c. 15.*) and whether all the rest of the Acts made 21 *Rich. II.* as well as that of the Revocation of the Judgment against the two *Spencers*, have not ever since stood Repealed, and do stand repealed at this day by the Authority of *Henry IV.* and his first Parliament. As for instance, an Act of the 21 *Richard II.* had multiplied the Kinds of Treason, which Act was Repealed 1 *Henry IV. c. 10.* and Treason reduced to the old Standard of the 25. *Edward III.* \* And can the *Remarker*, or *natural born Subject* show that any Man was ever tryed for Treasons upon the Statute of *Richard II.* after that Statute was Repealed by *H. IV.*? Or will they say that notwithstanding that Repeal of *Henry IV.* any Man may be now, or might at any time since have been tryed for Treason by the 21. *Rich. II.* and not by the 25. *Edward III.*?

After this, I need not say that this Repealed Parliament of the 21. *Rich. II.* on which these two Authors lay so great a Stress, was

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\* Witness the Statute of 1 H. 4. c. 10. Whereby all those Facts which were made Treasons in the divided time of R. II. were reduced to this of Ed. III. The Argument of A. B. Laud's Council, Hist. of his Trial p. 425.

not duly elected, and summoned, the Knights being not chosen by the Commons, *prout Mos exigit, sed per Regiam Voluntatem.* And as for the Lords, *summoneri fecit Rex omnes Dominos sibi adherentes.* And as it was not regularly call'd: so neither did it act with Freedom, but was held *viris armatis & Sagittariis immensis*, as is declared in the Parliament Roll 1 Henry IV. n. 21, 22.

Another Objection, which I considered, was the Declaration of Parliament 39. Henry VI. *That the Duke of York's Title could not be defeated.* This I said was a partial Declaration of an awed Parliament, when the King's Army was defeated, and the King himself the Duke's Prisoner: Otherwise they might have declared, that his Title was defeated by Acts of his own, as well as by Acts of Parliament. They might, I said, have declared this, upon the Principles of those with whom we are disputing; who when they are press'd with the Commands of Holy Scripture *to render unto Caesar the things that are Caesar's*, &c. think it a sufficient Answer to say, that *Tiberius Caesar* was a rightful Governor by the Submission and Oaths of the Roman Senate and People to him, as the Romans had before acquired a Right to the Government of *Judaea* by the Submission of the Jews. Since therefore the Title of the  
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Regal Family of the Jews was defeated by their submission to the Romans ; and the Title of the Roman Senate and People defeated by their Submission and Oaths to *Tiberius*: Upon the same Principle, the Duke of *York's* Title was defeated by his long Submission, obeying Summons to Parliament, accepting and executing Commissions under *H. VI.* and repeated Oaths of Allegiance to him, particularly that in the 30th Year of *H. VIth's* Reign,

In Answer to which, the *Remarker* first represents the Duke of *York* in *Durefs*, when he did all this, and therefore would have it to be void. *What our Kings* (calling the Duke of *York* King, who never call'd himself so, no, not when he had *H. VI.* Prisoner) *are forced to do in Durefs against themselves and their own Right, is of no Force*, p. 26. Again, *all this might be, and and yet the House of York might not give up their Right, and quit their Claim; but waited only for a more favourable Opportunity when they should get out of Durefs.* d. 53. Who would not imagine by this Account, that the Heirs of the House of *York*, (at least *Rich. Duke of York*) had pass'd their time in Prison? I have shew'd already, that *Edmund* Earl of *March* put himself at the Head of an Army, for *H. IV.* against *Glendour*, and discovered to *H. V.* the  
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Conspiracy of the Earl of *Cambridge*, his Brother in Law against that King : I might shew further from Sir *William* \* *Dugdale*, That he served King *Henry* Vth in his Wars in *France*; from *Rymer* † that he was in the fifth Year of *Henry* Vth. made Admiral at Sea. That in the sixth Year of that King, He was constituted Lieutenant of *Normandy*, and Warden of the Marches. And that in the first Year of *H. VI.* He was made Lieutenant of *Ireland* by that King, as appears both from \* *Dugdale* and † *Rymer*. And to shew you how good a Subject he was, and what an entire Confidence these two Kings had in him, I'll give you || Part of a Commission from each of these Kings to *Edmund* Earl of *March* who dyed in *Ireland*. *Jan.* 19. in the \* third Year of *Henry* VI. after he had lived in this en-

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\* *Baronage* Tom. I. under the Title of *March*.

† *Rymer's Fœdera*, Tom IX. p. 472.

\* *Baronage* ut supra.

|| *A. D.* 1418. *An.* 6. *H.* 5. Rex omnibus ad quos &c salutem. sciatis quod nos de fidelitate, probitate, & circumspetione carissimi consanguinei nostri *Edmundi* Comitis *Marchie* plenius confidentes, ordinavimus & constituimus ipsum Comitem Locum tenentem & Custodem generalem omnium Terrarum & Marchiarum totius Ducatus nostri *Normannie*, &c. habendum occupandum regendum & exercendum officium prædictum quamdiu nobis placuerit, &c. *Rymer's Fœd.* Tom. IX. p. 592.

tire Subjection to the Three Kings of the House of *Lancaster*.

I might observe also from † *Rymer*, that *Richard* Earl of *Cambridge*, who married the Sister and Heir of the Earl of *March*, and who was Father to *Richard* Duke of *York*, assisted *K. H. V.* in his Wars in *France*. But I come to *Richard* Duke of *York*, who one would almost think, by the *Remarker's* way of speaking of his *Durefs*, that he was scarce ever out of Prison. But the *Remarker* may find in *Sir William Dugdale*, that in the eighth Year of *K. H. VI.* He was Constable of *England*. In the 10th of that King, he was sent with a Commission to secure the Sea Coasts of *Normandy*. In the 12th. He was sent General, with the Duke of *Sommerfet*, to suppress an Insurrection in *Normandy*. In the 13th was joyned with

\* A. D. 1423. An. i. H. 6. Rex omnibus ad quos &c. salutem, sciatis quod nos, de fidelitate & circumspectione carissimi consanguinei nostri *Edmundi* Comitis *Marchie & Ultonie* plenius confidentes, de Avifamento & Assensu magni Concilii nostri, ordinavimus & constituimus ipsum Comitem Locum tenentem Terræ nostræ *Hiberniæ*, habendum &c. à primodie quo idem comes, vel deputatus suus in terra nostra prædicta applicabit usque ad finem novem annorum proximo sequentium & plenariè completorum. *Rymer's Fædera* Tom. 10. p. 282.

† *Dugdale* Baronage under the Title of *March*,  
 † *Fædera* &c. Tom. 9. p. 250.

him



him in Commission to govern *France*. In the 18th of K. H. VI. was constituted Lieutenant and Captain General for all *France* and *Normandy*. In the 23d of that King was made Regent of *France* and *Normandy*. In the 29th of H. VI. was constituted Lord Lieutenant of *Ireland*. In the 32 of H. VI. was made Protector of the Realm, and in the 35th H. VI. made Lord Lieutenant of *Ireland*. \*

And let me now ask the *Remarker*, whether these were not Instances of an entire Subjection in the Heirs of the House of *York*? Could they have given greater proofs of a voluntary Subjection, than by undertaking and executing these great Charges? And will the *Remarker* still say, they were in Durefs? In Durefs, when they were Admirals at Sea, Generals of great Armies in remote Countries, Regents, and Lieutenants of Great Kingdoms?

Not to enquire how many times the Duke of *York* repeated his Oath of Fidelity to K. H. VI. when he was admitted to those great Offices, or how often he took Oaths to him upon other Occasions, as that Oath which the Duke of *York*, and *Buckingham*, the Two Archbishops, Eleven Bishops, Six

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\* *Sir William Dugdale's Baronage.* Tom. 2. p. 159. 160. 161, &c. under the Title of *York*.

Earls, Two Viscounts, Eighteen Abbots, Two Priors, and Seventeen Barons took in Parliament unto *Henry VI.* in the 33d. Year of his Reign, *Novemb. 25.* for their Allegiance unto the King. \* Not to make this Enquiry, since that Oath || which the Duke of *York* took in the 30th Year of *H. Vith's* Reign at *St. Paul's Cross*, being a Renunciation of his Own, and a Recognition of *H. VI.* Right, was, as well his accepting, and executing those great Commissions, abundantly sufficient to defeat his Title. The Remarker, to avoid this consequence, will have the Duke of *York* to be in † *Durefs* when he took this Oath but let him look into *Stow* \* and he will find, that he was at full Liberty at that time; nay, that in the 31st. Year of that Reign, he took this Oath again at *Westminster*, and at *Coventry* at sundry Times. † Since then he was not in *Durefs*, but at full Liberty, when He took and repeated this Oath, the Consequence sure is unavoidable. No faith the Remarker, Grant this too that he was at Liberty, what then? Why then you'll

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\* See the Book of Oaths p. 145.

|| See *Stow* p. 395.

† See Remarks p. 26, 53.

\* *Stow* ibid.

† *Stow* p. 396.

say he had quitted his Claim. I beg Mr. H's. pardon, no such matter I can assure you, but the quite contrary; for the very swearing of Allegiance upon an Agreement, was so far from weakning his Title, that it rather strengthened it. \* That Oath which Mr. H. calls a Recognition of Henry VI. Right, was indeed or de facto Henry VI. Recognition of Richard Duke of York's Right, for saith he, Richard Duke of York took this Oath upon an Agreement. † He goes on, if all be true which I have said, as it is, the Gentlemen may still say, that the Right of the Jews and Roman Senate was defeated, and that the Roman Emperours were rightful Governours, because the Jews and Roman Senate had submitted and sworn Allegiance to them; and yet nevertheless the House of York, tho' they had sworn Allegiance to the Possessor, had still a good Title, and such as the Usurper by the Agreement owned. The Gentlemen he speaks of may abide by their Answer, and yet not own that the Duke's Title was defeated, and may boldly assert, that his Title was not actually defeated by the Legislative Power of the Realm. Neither need they acknowledge, that this Declaration

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\* Remarks p. 26, 27.

† Remarks p. 59.



*of Parliament proves too much, for it proves what it was brought to prove, and no more.* †

But now if all this be *false*, which the *Remarker* says is true, that *Richard Duke of York* took this Oath upon an *Agreement* which acknowledged his Right: And if the contrary to it be true, that this Oath mention'd in the *View*, was not taken upon the *Agreement*, but taken and repeated several Years before the *Agreement*; then it follows, upon the *Remarker's*, and these Gentlemens own Principles, and way of Reasoning, That as the Right of the Jews and Roman Senate was defeated by their submission to the Roman Emperors: So was the Duke of York's Title defeated by his long and absolute Submission and repeated Oaths of Allegiance to K. H. VI. That as the Duke's Title was thus defeated by the afore-said Oath, since the Oath was taken before the *Agreement*, Defeated I say, upon their own Principles by the Duke's own Act and Deed, notwithstanding this Declaration of Parliament: So, notwithstanding the same, it might be defeated, as it actually was, by the Legislative Power of the Realm, and there-

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\* *Remarks* p. 60.

fore this Declaration of Parliament proving too much, proves nothing at all.

These Consequences are unavoidable, and this Declaration, *that the Title of the Duke of York could not be defeated*, must be given up on their own Principles, if that be false, which the *Remarker* affirms to be true, *that this Oath was not taken untill the Agreement*: And false it certainly is; for the Agreement in Parliament between K. H. VI. and Richard Duke of York was made in the 39th Year of K. H. VIth's Reign; but this Oath was taken a great many Years before it; the first time at St. Paul's Cross in the 30th Year of H. VI. which was 9 Years before the Agreement, and again at *Westminster*, and *Coventry* at fundry times \* in the 31 Year of H. VI. which was 8 Years before it.

'Tis true, that the Duke of York took an Oath upon the Agreement; but as this was taken several Years after the Oath, which I cited and insisted on in the *View*: So was it a different Oath, and of a different Nature from that, as is known to all who are well acquainted with the History of that Age, and as the *Remarker* might have known by

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\* See Stow as cited before.

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\* See Stow as cited before.

those Words of the Oath which I cited, or might have seen in *Stow* p. 365. (whether I referr'd the Reader,) and may see in the *Appendix* \* to this Book, where he'll find both these Oaths. And whatever the *Remarker* thinks, I was not so very absurd, as to go about to prove, that the D. of *York* had defeated his Title 9 Years before the Declaration of Parliament by an Oath, which he did not take till after that Declaration.

I cannot but wonder, that the *Remarker* and some others do so boldly adventure to pronounce upon our Behaviour in this Age, from the Proceedings of that Age, which they appear to be so little acquainted with. The *Remarker* puts the Duke of *York* in *Durefs*, when he took this Oath of Recognition to *H. VI.* so often mention'd, tho' *Stow* expressly takes notice he was then at *full Liberty*. He makes him not to take this Oath till after the Agreement; when it is evident from *Stow*, that he had taken it the third time eight Years before it: And by a complication of these Mistakes, (to pass by the rest that he has made in this Matter) He makes the D. of *York* to be in *Durefs*, when he took this Oath to *H. VI.* in the 39th Year of his Reign; when every one, who knows any thing of this History, cannot but know the Reverse of this to be

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\* *Numb. II. III.*

true, and that when the Agreement was made and this Oath taken, the Duke of York was at full Liberty, and in full Power; and H. VI. not in the *Remarker's* imaginary Durefs, but the Duke of York's real Prisoner.

The *Remarker's* Hypothesis indeed required, that the Duke should never have taken any Oath of Fidelity to H. VI. till after the Agreement, or that he should be in Durefs when he took it; otherwise his Title would on the *Remarker's* Principles be defeated by his Oath. Far be it from me to say the *Remarker* knew this to be false, I rather charitably believe he did not know it to be so; but that he was so possess'd with his Hypothesis, that he thought he knew that to be true, which any History of that Time could have told him was false; and did not see those Facts, which almost every Body else does see.

Every Body, I mean, who is not to the same Degree possess'd with his Hypothesis. For here's very lately come to my Hands a 3d. Answer, under the Title of *The English Constitution fully stated, with some Animadversions on Mr. Higden's Mistakes about it*, in which the Author falls into the *Remarker's* Mistakes, that the Duke of York did not take the Oath to H. VI. cited in the View till after the Agreement, saying, *when*



*Richard Duke of York took that Oath (which Mr. Higden lays so much stress on) the Parliament was sitting, to whom he made his Claim.* \* Enough has been already said in confutation of this Mistake. I shall only observe from the Repetition of it by the *full Stater*, that when Men write from an Hypothesis, they almost as naturally fall into the same Track of Errour, as those that write from certain Memoirs, agree in a true relation of Facts. For the *full Stater* did not, it seems, take up his Mistakes in this matter from the *Remarks*; since he tells us † that Book came not to him, till he was got to the 69th. Page of his own Book; nor could he, any more than the *Remarker* himself could, take them from any Historian: Nay, which is more surprizing, he tells us, that *by my directing them to Stow, I had help'd him to see at large that whole Agreement between the King and the Duke.* || Now it is not plainer in Numeration, that 31 goes before 32, and that 39 is after both those Numbers, than it is in *Stow*, that the Duke's Oath, on which I laid so great a stress, was taken by him in the 30th. Year, repeated twice in the 31

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\* *English Constitution fully stated* p. 23.

† *English Constitution fully stated* p. 69.

|| *Ibid.* p. 25.

Year of *H. VI.* and that the Agreement was not made till the 39th. Year of that King: And yet while the *full Stater* is animadverting on my Mistakes, as if he had read *Stow* backwards, he makes the Agreement to be before that Oath, *i. e.* he makes what pass'd in the 39th Year, to be done before that which pass'd in the 30th and 31 Years of that Reign, and upon this Mistake he forms his Argument to prove me mistaken.

I have more charity for him too than to believe he said this, because his Argument required it; but I may say if he did not read *Stow* backwards, he read him under the most violent Impressions of his Hypothesis.

Under these Impressions, he goes on, saying, *in such a Case as this, 'tis no wonder, if they who espoused the Title of Richard Duke of York submitted, \* and took Oaths to Henry VI. while there could be no Injury thereby done to the right Heir, he himself consenting and doing the same.* Here he ventures further than his Friend the *Remarker*, who has not pretended to produce any Non-jurors in Henry VIth's Reign: Whereas the *full Stater* here supposes, that all, who espoused the Duke of York's Title in the 39th Year of Henry VI. had never submitted, or taken

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\* *The English Constitution fully stated* p. 24.

Oaths before that time: altho' at the same time he is not able to produce one Non-juror in that Reign, or a single Authority to support his Assertion, for which he has no better Foundation than his own Mistake, that the Duke himself never submitted, or took an Oath to H. VI. before that time. *Then, saith he, they submitted and took Oaths, the Duke consenting and doing the same,* as if he had not done the same long before. He knew nothing it seems of the entire Submission in which the Duke had lived; nothing of the many important Commissions that he had accepted; nothing of those great Offices that he had executed under Henry VI. (of all which I have given some account above) no more than of the Oaths that he had taken to him before this time: by which the Reader may judge how well skilled he is in the English History, and well qualified to give the *full State* of the English Constitution. Before I read this Book, I thought I must have excused myself to the Author, for not having taken notice of it sooner (Several Sheets of this *Defence* having passed the Press before I saw it) but after this, the Reader, may possibly think I shall want his Excuse, if I should take any farther notice of it. When the *full Stater* sent his Book in MS. to his Friend,

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of whom it seems he had borrowed the *Statute Book*, and some other Books in order to make his Animadversions on the *View*, he says to him, *excuse me I pray, for keeping them so long; a Business one's unaccustomed to, was like but to go on slowly, and to be but awkwardly done at last, p. 1.* and as he said this of his Book, after he had writ it; so in this I perfectly agree with him, after I have read it, and shall therefore take my leave of him, leaving the rest of his Mistakes to be corrected by what is said to the *Watchmen on higher ground*, as he calls the *Remarker*, and N. B. *Subject*.

Having proved in the *View*, that Kings for the Time being with their Two Houses of Parliament had the Legislative Power, they must have also the Supream Power, the former being always essential to, and inseparable from the latter. To which the *Remarker* answers, *therefore Cromwell having the Legislative Power, was supream and King for the time being.* \* And to his Answer I reply, therefore *Cromwell* was not Supreme and King for the Time being, and for this Reason among others, because he had not, nor ever was acknowledged by our Kings and Parliaments to have had the Le-

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\* *Remarks p. 62.*

gislative Power. The Acts of Parliament of all our Kings *de facto* have stood, as I have shewn, by their original Force and Virtue without a Confirmation; but the *Remarker* cannot but know that *Oliver's* Acts sunk of themselves without a Repeal; or if he doth not know it, he may be convinced of it by the Statute Book, and *Scobel's* Collections.

If *Mr. H.* says, that *Cromwell's* Acts were not fully owned by the Hereditary King, that will not answer the Difficulty. \*

What does the *Remarker* mean? Does *Mr. H.* say, *Cromwell's* Acts were not fully own'd? *Mr. H.* says, they were not own'd at all by any of our Hereditary Kings. The *Remarker* goes on.

For if he had the Authority, and was the Legislator, the Heir ought according to *Mr. H's* Hypothesis to have own'd his as well as any other King *de facto's* Acts, † i. e. if *Cromwell* had had, what he had not, he would have been, what he was not. But according to *Mr. H's* Hypothesis, *Cromwell* had not the Legislative Power, nor was King for the Time being, and therefore the Hereditary King was not oblig'd to acknowledge his Acts, as he never did.

\* P. 613

† P. 62,

Ought not this then, (to use Mr. H's. Words) to conclude all private Subjects? Can Mr. H. then disown this Authority, without opposing his private Sentiments to that which himself acknowledges to be the Supreme Authority and judgment of the Kingdom? Yes, Mr. H. can disown Cromwell's Authority, without opposing his Sentiments to that which himself acknowledges to be the Supreme Authority and Judgment of the Kingdom: And may yet very well affirm, what he has proved, that the *Remarker* cannot disown the Legislative Authority of Kings for the Time being, which is own'd by Hereditary Kings and their Parliaments, without opposing his private Sentiments to that which himself acknowledges to be the Supreme Authority and Judgment of the Kingdom.

Lastly, I observ'd, that since Kings for the Time being have by the Statute and Common Law, the Legislative Power of this Realm, the Obedience of their Subjects is due to their Laws, and their Allegiance to their Persons. And then, say I, answers the *Remarker*, the Obedience of the Subjects was due to Cromwell. He should have proved it, as well as have said it; but that he never can do from my Principles, or our Constitution, by which Cromwell had not the Legislative



gislative Power, and therefore the Obedience of the Subjects was not due to his Laws. This as well as the rest of his Consequences, do not follow from my Principles, but from his own Mistakes about 'em.

The Reader may observe, that when the *Remarker*, and *Natural Born Subject* are distressed for an Answer, and cannot relieve themselves by *sub ratione juris*, or the presumptive Consent, they frequently call in *Oliver* to their Assistance. This is what is call'd arguing *ab absurdo*. But when they first mistake or misrepresent my Opinion, and then draw absurd Consequences from it, the Absurdities, as well as the Mistakes, are their Own.

But once for all to dispatch *Oliver*, who is so often introduced by these Writers. First, as I have observed, that as by our Constitution he had not the Legislative Authority of the Kingdom, nor was ever acknowledged by our Kings to have had it, and therefore could not have the Sovereign Authority of the Kingdom: So 2dly. It is as true *è converso*, that he who had not the Regal Title and Office, could not have the Legislative Authority in this Monarchy, in which by our Constitution, a Law cannot be made without a King or Queen; and therefore all the *Ordinances* of the Two Houses of Parliament,

liament, all the *Acts* of the *Rump*, and all *Oliver's Acts* sunk of themselves as Nullities *ab origine*. Such a Protector as *Oliver* was, is a Monster not known to our Constitution or Laws; but King and Queen are not meer Titles, but carry with them the Regal Office and the Sovereign Authority and Jurisdiction of the Realm, which is known to our Laws, and is the Soul of them.

3dly. Those only have been acknowledged for Kings, *for the Time being*, who have been placed in the Throne by the States of the Realm, and recognized by Parliament. Whereas *Oliver* had not the Consent of the 3 Estates of the Realm, even for his Protectorship: Two of the 3 Estates, the Lords Spiritual and Temporal, had been long before laid aside, and it was no better, than a Mock-representation of the 3d. Estate, the base and ignominious Tools of his Ambition, with the help of his Fanatick Army, that made him Protector.

CHAP.

## CHAPTER IV.

*A Defence of the fourth Chapter, in which the Allegiance of the Subject was proved to be due to the King for the Time being, by the Statute Law of this Realm, with an Answer to the most considerable Objections.*

**A**Lthough the Allegiance of the Subject to Kings for the Time being doth follow as a necessary Consequence from their being invested with the Legislative Authority, yet I took notice, that we had also express Statutes for it.

As first, the Statute of Treasons made 25. Edw. III. which declares what Offences are Treason against our Sovereign Lord the King. And that by *our Sovereign Lord the King* in this Statute, is understood *only the King in Possession of the Crown and Kingdom, tho' he be Rex de facto, and not de jure*, we had the Opinions of two great Lawyers, the Lord Chief Justice Coke and Hale; and no great Lawyer's Opinion, as far as I knew, to the contrary. Could the *Remarker* have produced any great Lawyer that has contradicted either of these chief Justices, he would not have produced *Prin*,  
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at least he would not have produced him alone, who never had any great reputation either for Skill or Integrity. But because *Prin* makes both Pages in the Remarks, let the *Remarker* read Mr. *Collier's* Preface to his \* *Ecclesiastical History*, where he examines *Prin's* 2d. Vol. of Records, and *thinks* he finds him light upon the Scale, and that there lye strong presumptions against his Skill or Integrity, or both, which may serve, saith he, as a Caution of that Author in other Matters.

The *Remarker* † cites however *Moor's* Reports where it is said, that Allegiance follows the Natural Person, (and that must, saith the *Remarker*, be understood of the King *de jure*, as if a King *de facto* had not a Natural Person,) for if the King is by Force driven out of his Kingdom, and another usurps; notwithstanding this, the Allegiance of the Subject does not cease, tho' the Law does. I could in this very Case cite a Paragraph, which I am sure the *Remarker* will not subscribe to: But to go no farther than his Citation, in which by another that usurps under whom the Law does cease, he would understand a King *de facto*, but this cannot

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\* Preface p. 4.

† Remarks p. 65, 66.

be, because the Law is so far from ceasing under a King *de facto*, that it is administered not only actually, but legally administered by him, and discontinued only by his *Demise*, as I have shewn not only from *Bagot's* but several other Cases. And therefore by *another that usurps*, must be understood a *Simon Monfort*, a *Lady Jane Grey*, or an *Oliver* under whom the Laws did cease, and no judicial Proceedings were valid farther than they were afterwards confirmed.

He cites *Coke's* Report of *Calvin's* case, where it is said, *true and faithful Legiance, and Obedience is an Incident inseparable to every Subject as soon as he is born.* And he calls it *Natural Allegiance*, saith the *Remarker*, which *can never be due to a King de facto, in opposition to a King de jure.* \* These last Words are the *Remarker's* Gloss, but the Words of the Report amount to no more than this, that every Person is born in subjection to Government, and to whomsoever the Laws of that Government under which he is born, direct him to pay his Allegiance, to him he ought to pay it: And why that may not be to the King for the Time being, if the Laws require it, I see no reason; for certainly the Laws of Nature do neither tell us who is our Prince, nor what measures of Obedience are due to him. If they did,  
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as the Laws of Nature are every where the same, Persons would be entitled to Sovereignty by the same way, and the measures of Obedience would be the same in all Countries, in *England*, in *France*, and in *Poland*, which no Man sure will say: And therefore Natural Allegiance is the same with Legal Allegiance, and go both together, as the *Remarker* has observ'd from *Sir Edw. Coke. p. 81.*

But since he has cited *Calvin's Case*, let me put him in mind of a Maxim laid down there (than which there is not a clearer in the whole Case) *Protectio trahit subjectionem, & subiectio trahit protectionem*: Which being understood, as it ought to be by the whole tenor of the Case, of the Protection of a King, is of it self sufficient to determin the Sense of the 25 *Edw. III.* against the *Remarker*, and to put an end to the whole Controversy.

*Judge Hale's Opinion*, as 'tis represented in his *Pleas of the Crown*, is of no value in the World, saith the *Remarker*, because it was a *Posthumous Work* written in his younger Years about the End of *K. Charles I. p. 65.* The Work indeed was *Posthumous*, but genuine; and he in his younger Years, tho' not so very young towards the latter End of *K. Ch. I.* but as young as he was, he was at that time one of the brightest Men of his Profession; otherwise he would not have been



been chosen of Council to the E. of *Strafford*, and Archbishop *Laud*, and design'd for the Blessed Martyr himself, had he thought it fit to have pleaded in that villainous Court. Tho' he was probably the youngest of Archbishop *Laud*'s Council, yet Archbishop *Sancroft* has put this Note in the Margin of the History of that great Prelate's Tryal. *That the Lord Chancellor Finch told him, that the Argument which was deliver'd by Mr. Hern. at A. B. L. Tryal was not his (tho' he pronounced it) but Mr. Hale's, afterwards Lord Chief \* Justice.* But because the Remarker, speaking with the last contempt of this Book, says, *no one that is a Lawyer would make, use of such a Work, tho' Mr. H. † does,* he may find it cited as a good Authority by the late Lord Chief Justice *Holt* in a printed Tryal; and I am told by those that frequent the Courts, that it is frequently cited with Authority both from the Bench and Bar.

As the Remarker has attacked the Reputation of the Book, the N. B. Subject attacks the reputation of the Author. Then for Hales, saith he, *He was a Judge under Oliver, as you may see in his Life by Dr. Burnet. And therefore there lay not the least Tem-*

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*The Troubles and Tryals.*

\* *History of A. B. Laud's p. 422.*

† *Remarks p. 65.*  
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ptation (he means, there lay a great Temptation in his way,) to palliate and smooth over a Cause, wherein he had been so far concerned. \* But he should have told us how little Sir Matthew Hale had been concerned; he should have told us, that before he took this Commission, he was much urged to accept it by some eminent Men of his own Profession, who were of the Kings Party, as Sir Orlando Bridgeman, and Sir Geoffery Palmer; and was also satisfied concerning the lawfulness of it by some famous Divines, in particular, Dr. Sheldon and Dr. Henchman, who were afterwards promoted to the Sees of Canterbury and London. That tho' he did accept this Commission from Oliver, he would make no Declaration acknowledging his Authority, nor try any State Prisoners †; and he was constant to his Resolution, and never did either of them. Had the Natural Born Subject told us this, as he might have done from the Book that he cites, he had done Justice to this great Man's Memory, and would have let the Reader see, that the Chief Justice did, as our Laws do, make a manifest Difference betwixt a King *de facto*, and an Oliver; and that the former is within the purview of

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\* Letter p. 76.

† See the Bishop of Sarum's Life of Sir M. Hale, p. 36, 37. &c.  
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the 25th *Edw.* III. and the latter is not. In the mean time, how scrupulous is the *N. B. Subject* in his Chronology, who makes the Judge tempted to deliver this Opinion in his *Pleas of the Crown*, to smooth over a Commission that he did not accept till many Years after that Book was written? for the Commission was not taken till 1653, and the Book was written in *K. Charles* the first's Reign, as he may see in the *Remarks*.

The *Natural Born Subject* mentions a MS. of the Chief Justice's, which yet I don't perceive he has ever seen; for he doth not tell us where it is to be found, nor cites any thing from it, and therefore I need say nothing to it.

2dly. This appeared, I said, to be the sense of the Statute, not only from the Opinions of the greatest Lawyers, but also from the nature and design of the Law, which was only declarative; not to make new *Species*'s of Treason, but only to declare those Offences to be Treason by this Statute, which were so before by common Law and Usage. And therefore as those Offences only are Treason by this Statute, which were so before by the Common Law and Usage of the Realm: So by the *King* in this Statute, against whom those offences are Treason, He only must be understood, who was King by the same common Law and Usage, which I have prov'd to be the Regnant King. Upon which the *Remarker* says,



says, Mr. H. is a bold Man to assert this for I believe, he has not one Lawyer (since the Conquest; provided he can find one Regnant King without an Hereditary Title or a Pretence to it) that will stand by him in this Assertion, \* and yet he himself has just before been opposing the Authority of two Chief Justices, Coke, and Hale, for asserting the same; and who asserted it, without his Proviso, or any thing like it; and has not been able in the mean time to produce one Lawyer, unless it be Prin, a very indifferent one, that has contradicted either of them.

But, I said, we should easily be determined to this sense of the Statute, when we consider that as before this Statute, and a long time after it, the distinction of King *de jure* and *de facto* was not known: So the Regnant King only could be King in this Statute, since there was no other King but He: Others indeed sometimes pretended a better Right to the Throne, than the Prince that possess'd it; but they never assum'd the Regal Title, nor did their Adherents ever give it them, nor the Historians who wrote in those Times or of them, and of this I have given several Instances.

The *Remarker* talks of the *Right Heirs* not assuming the *Regal Title*; because in *Durefs* p. 52. and says, there are *Cases* when a Man dare not say, his *Soul* is his own, p. 69. What does the *Remarker* mean? Was this the *Case* of *Robert Duke of Normandy*, when he claimed either against his Brother King *William Rufus*, or *Henry I*? Of *Maud* when she claimed against King *Stephen*, and had him for some time in real *Durefs*? Of *Arthur*, against King *John*? Which were the very *Instances* I gave. Were not these *Sovereign Princes* in *Possession* of large *Territories*, and *Maud* the *Wife* of a *Sovereign*? And were not every one of them, in their times, at the *Head* of powerful *Armies*, when they set up their *Claims*? But in *Utopia*, it seems, this is to be in *Durefs*. But to bring the *Remarker* thence into *England*, what hinder'd these *Claimants* from taking the *Regal Title*, when they invaded the *Kingdom* with strong *Armies*? Was it not because they knew, that the *Realm* knew but one *King*, who was the *Regnant King*? and who therefore, as I said, must be the *King* in this *Statute*, since there was no other *King* but He.

The learned and ingenious *Ecclesiastical Historian*, whom I have so often cited, when he comes to the *Reign* of King *Stephen*,  
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makes it the Reign of *Maud*, and dates all the occurrences of that Time by the Years of her Reign, until the Compromise betwixt *Stephen* and her Son *H. II.* But in this he stands alone without any Authority either ancient or modern, nay, against the Authority of all the ancient Historians from whom he collects the History of this Reign, who constantly call it the Reign of King *Stephen*. A strong Presumption, that this Author's notion of Government was no more known to the Writers of that Time, than *Maud's* Reign was. Why did he not also make it the Reign of King *Edgar Atheling*, and not of King *William I.*? Of King *Robert*, and not of King *William II.* or King *Henry I.* before the Compromise made with his two Brothers successively? Why not the Reign of King *Arthur*, and not of King *John*? Of Queen *Eleanor*, and not of King *John*, or King *Henry III.* until *Eleanor's* Death? &c. He had as much Authority and Reason for this Change in all those Reigns, as in that one in which he has made it.

But to return to the *Remarker*, who produces some Instances to prove, that Treason may be committed against a King out of Possession. As it was by the Murderers of King *Charles I.* and others that were executed, and pardoned for Treason against



King *Charles II.* tho' out of Possession. \* But I do not see how these Instances are to his purpose; for it is certain King *Charles I.* was both King *de jure* and *de facto* too: And therefore the Lord Chief Baron *Bridgeman* saith to Cook the Regicide, King *Charles* was owned by these Men and you as King, you charged him as King, and you sentenced him as King, you proceeded against him as King, and as yet King. \*

As for the Case of King *Charles II.* tho' he was not in Possession, yet there was no King in Possession against him; and therefore he did, what *Edward IV.* durst not, assume the Regal Title before he was in Possession, and dated the beginning of his Reign from his Fathers Death, and call'd the Year of his Restoration, the 12th. Year of his Reign. Whereas *Edward IV.* did not assume the Regal Title till the 4th. Day of *March*, on which he took Possession of the Throne with the consent of the States; from which Day, and not from the Day of his Fathers Death, he began the Date of his Reign. Nay, *Henry VI.* himself who had before been almost 39. Years in Possession, doth not, upon his *Readeption*, reckon the 10 intermediate Years of *Edward the IVth's*

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\* *The Trial of the Regicides*, p. 146,

\* *Remarks* p. 69, 70,

Possession, as part of his own Reign; and therefore in the Year Books, the Date runs thus; *Anno ab inchoatione Regni Henrici VI quadragesimo nono, & Readeptionis Regie potestatis primo*, and not *Anno Regni Henrici sexti quadragesimo nono*.

As to the case of the Murderers of *Edw. II.* who were put to Death for Treason, tho' he was out of Possession, Sir *Edw. Coke* says, it appeareth by Briton to compass the Death of the Father of the King is Treason, and so was the Law bolden after that; for after *Edward II.* had dismissed himself of his Kingly Office and Duty, and his Son by the Name of *Edward II.* was crowned, and King Regnant, those cursed Caitifs, *Thomas Gourney* and *William Ocle*, and others were attainted of high Treason for murdering the King's Father, who had been King by the Name of *Edward II.* and had judgment to be drawn, hang'd and quartered; the like judgment was given against *Sir John Mautrevers Knight*, and others as being guilty of the Death of the King's Uncle *Edmund Earl of Kent*, which at that time (being so near of the Blood) was by some also bolden Treason; But now this Act of the 25th. *Edward III.* hath restrained High Treason in case of Death la nôtre Seignior le Roy la-

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compagnie, & al eigne fitz & heire le Roy.  
Instit. Pt. 4. c. 1. p. 7.

The *Remarker* proceeds to the famous Statute of the XI. of Henry VII. chap. 1. and says, *I might send Mr. H. and his Friends to a Book entitl'd, Animadversions upon the Modern Explanation of the II. of Henry VII. chap. 1. or &c. and to the Case of Allegiance to a King in Possession, \* &c.* The first of these Books is little more than an Abridgment of the second, and I do not know any thing considerable in either, but what was, or might be answer'd from the *View*. Some of the most considerable Arguments in both were answer'd there, without mentioning the Books in which they were urged, which I thought the civilest way, and to give a true Account of the English Constitution supported by Law and History, I took to be the shortest way of answering the rest.

That, the King who is in Possession of the Throne, and the full Administration of the Government and Laws, with the consent of the Estates and a Recognition of Parliament, is the King for the time being, to whom this Statute declares Allegiance is due,

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\* *Remarks* p. 72.



and secures the Subject in the Discharge of it, was the *Ancient* Explanation of this Statute ; and if the Arguments of this Author's Book had not been otherwise answer'd, the Title alone which calls this a *Modern Explanation* (whilst his own is in truth the *Modern*) was sufficient to shew how much he was mistaken in the Controversy. If this *Explanation* of the Statute obtain'd since the Revolution only, why did he not give us the Opinions of elder Lawyers for that which he would have pass for the *Ancient Explanation* of it? Which had been the only way to have made good the Title of his Book. But indeed, it was not possible for him to give us the Opinions of Lawyers, which they themselves had never given.

And to shew this was not possible for him, I'll briefly represent the Traditionary sense of the Lawyers upon this Question. And we need go no higher than the Reign in which this Statute was made, when the Judges, as I have observed, upon *Henry* the VIIth's coming to the Throne, unanimously deliver'd it as a Maxim of the Law of *England*, that *the Crown takes away all Defects and Stops in Blood*, which Maxim being at common Law, as it were, the Counter-part to this Statute, shews, that this  
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Statute and the Explanation of it which he calls *Modern*, was the Law of *England* before this Statute was made.

In *Henry VIII.* Reign the Conference abovemention'd, betwixt Sir *Thomas Moor*, who had been Lord Chancellor, and *Rich*, who was then Solicitor General, is a sufficient Evidence, that those great Lawyers, howsoever they differ'd in another Point, yet agreed in this, that the Regnant King with a Parliamentary Authority, was entitled to the Allegiance of the Subject.

In Queen *Mary's* Reign we have the Opinion of the Lord Chief Justice *Brook*, who recommends his Abridgment of *Bagot's* Case with a *Nota* (that contains much the same Doctrine at common Law, which is declared and enacted in this Statute,) and no Lawyer in that, or any other Reign since, has so so much as put a *Query* upon it.

In Queen *Elizabeth's* Reign, we have Sir *Nicholas Bacon*, her Lord Keeper, asserting in Parliament the aforesaid Maxim, which, as I have said, was at common Law the Counterpart to this Statute, and the Queen and Parliament proceeding agreeably to his judgment.

In the Reign of King *James*, we have that Lord Keeper's Son, the Lord Chancellor *Bacon*, who at the same time that he gives  
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this Explanation, gives the highest Character of the Statute it self.

In King *Charles* I. Reign, we have the Lord Chief Justice *Coke*.

And in King *Charles*. II. Reign, the Lord Keeper *Bridgeman*, and Lord Chief Justice *Hale*, all bearing Testimony to the Authority of the Law, and to this Explanation of it; which had the *Animadverter* consider'd, he certainly would never have call'd it the *Modern Explanation* in the Title of his Pamphlet, and possibly never have published his Pamphlet at all.

As to the Objection against the Title of *Henry* VII. the Legislator, which is insisted on by the *Remarker*, and the *Animadverter on the Modern Explanation*, if there needs any further Answer than what has been already given in the *View*, Mr. *Collier* will give it, and I hope, conclude the *Animadverter* at least by what he says: \* *As to Henry VIIth's Birth, it may be observed, that he was descended from a younger Branch, and that the House of York stood foremost in the Succession: But if his Title appears<sup>n</sup> questionable upon this Score, the Queen by her Acquiescence seems to have*

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\* *Ecclesiastical History in H. VII. p. 703.*



*dropt her Claim, and transferr'd her Right to him, saith Mr. Collier.* Nay, we find that after her Death, Henry VII. quietly enjoyed the Crown according to the Act of Settlement made in the first Year of his Reign.

The *Remarker* here, as well as in other Places, sometimes repeats their Objections without adding any new Force to them, or disarming my Answers of their Force, and sometimes without so much as taking any notice of my Answers; particularly that which has been esteemed the most considerable Objection against this Statute, the Duke of *Northumberland's* Case, which was fairly and fully answered in the *View*, p. 67, 68, 69, he has, without taking notice of any of my Answers, urged anew, \* as if there had been nothing said to it.

And therefore, instead of reinforcing my former Answers to the Objections against this Statute or this Explanation of it, I shall only desire the Reader to give himself the Trouble to read them in the *View*, and with them the Statute it self, which I shall print at the end of this Defence, † because I have met with some, who have taken upon them

\* *Remarks* p. 78.

|| *View* p. 65, 66. &c.

† Appendix Numb. IV.

to judge of this Question, without ever seeing that Statute.

The *Remarker* gives this Law hard Names, saying, *it is a very ridiculous Act, if design'd to be perpetual*, p. 79. and that *the Constitution, if Mr. Hs. Notion be allowed to be good, is not only the most ridiculous, but most unrighteous and pernicious Constitution in the World*, p. 7. Not to observe here, what the Reader may observe in several other places of this Writer, that he, as well as some others, takes both Mr. Hs. Notion and the Law by halves; but in Answer to the hard Names that he gives this Law, I need only shew, that the Lord Chancellor *Bacon*, who was one of the greatest Men of his Age, and who lived under a Prince of an undoubted Title, had a very different notion both of the Justice and Wisdom of this Act of Parliament. He says, *it was agreeable to reason of State, and to good Conscience too, That the Spirit of this Law was pious and noble, just and magnanimous*. But how great a Man soever my Lord *Bacon* was, he may not be of so great Authority with the *Remarker*, as a Writer of his own side: And since he has recommended one of that Anthors's Tracts to my Perusal, I shall recommend to him a later, and, I think, a better Piece that came from the same Hand,  
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where the *Remarker* will find a Character of this Statute, very different from that which himself has given of it. After this Author had taken notice of the Severities of some former Revolutions, which yet he says, had been only against Men who had been in Arms, and not the thousandth part of them neither, much less of any others, and that by way of Attainders; he adds, *and even these Severities were thought by Henry VII. and his Parliament so harsh and cruel, so contrary to Reason and Humanity, against all Law, Reason and good Conscience, as the Act express'd it, that they did all that Men and Law could do to put a final End to it, that such Proceedings and Practices might never more be seen in the English Nation. This is that famous Statute, (II. Henry VII. c. 1.) which expressly provides, that from henceforth no manner of Person or Persons that attend the King for the Time being in his Wars, or act by Commission from him, be in no wise convict, &c. This is certainly the utmost Provision of Law, and 'tis impossible, that any stronger can be made by Men. And whatsoever other Constructions may be made of this Statute, 'tis evident that thereby all violent Excesses of Revolutions are not only restrained, but perfectly taken away; that however it may happen in the Field, and in the Heat*  
*of*



of War, yet that no after Ravages should be committed, and Men should not be destroyed by Law who had escaped the Sword. I need not reflect, how suitable this Law is to the mutable Estate of Mankind, and the Vicissitudes that constantly accompany all humane Affairs. \* This Author wrote this Book with a Temper, which I could wish for their own sakes the *Remarker* and *Natural Born Subject* had imitated.

## C H A P. V.

*A Defence of the Fifth Chapter of the View, wherein the Objection from the Act of Recognition, 1. Jac. I. is answer'd.*

**I**N the fifth Chapter of the *View* I answer'd the Objection of the Virtual Repeal of the 11. *Henry VII.* Chap. 1. by the 1. *Jac.* Ch. 1. And yet the *Remarker*, who thinks this Statute 1 *Henry VII.* ch. 1. was virtually, if not actually repealed by the 1. *Jac. I.* p. 79. says, it was null and void in itself, p. 87. But certainly if it was repealed, it was in Force before it was repealed; and therefore not null and void in it self: Or if it was null in itself from the time it was

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\* The present State of Jacobitism. A second part in Answer to the first. p. 12, 13.

enacted by King *Henry VII.* it could not be repealed above 100 Years after by his great Grandson K. *James I.* But the pretended Nullity, and imaginary Repeal of this Law, as well as the real Contradiction betwixt these two, are all the *Remarker's* own.

And yet the *Remarker* is ready to yield all that is inferr'd from the 11 of *Henry VII.* *if we had, saith he, a Law wherein it was declared and enacted, that such a one* (he is speaking of a King that is not the next Heir). *was to be King to all Intents and Purposes.\** Is not the 11th of *Henry VII.* such a Law? And why then is this Law null in it self, any more than that Law would be? And why will not this justify the Subjects, as he grants that would, when it is to all Intents and Purposes such a Law, as that which the *Remarker* supposes would not be null, but would justify the Subjects in recognizing such a King.

The rest of his *Remarks* on this Chapter of the View are so confused perplexed and inconsistent, that they want no other Confutation. But because he lays a great stress upon one of them, it shall be particularly consider'd. *To shew saith he, that*

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\* *Remarks* p. 85.

*King James I. was Rightful Heir, the Act of Recognition does not say, that he was Rightfully descended of Henry VII. but of Margaret (mark that) who was rightfully descended from Elizabeth Daughter of Edward IV. \** The Remarker here uses too great a Liberty in deducing King James's Descent, leaving out some Words, and putting in others, which are not in the Act: For the Act doth expressly derive his Descent from K. Hen. VII. his Grandfather (tho' he says it doth not) as well as from Queen Elizabeth his Grandmother; and doth not affirm, (as he says it doth) that the Lady Margaret was any more rightfully descended from Queen Elizabeth, than from King Henry VII. This Act of Recognition takes notice of the Happiness of this Kingdom first in the Union of the Two Houses of York, and Lancaster, and then in the Union of the Two Kingdoms of England, and Scotland, in the Kings Person, † who, as it follows in the Act, is lineally, rightfully, and lawfully descended, of the Body of the most Excellent Lady Margaret Eldest Daughter of the most renowned King Henry VII. (let the Remarker mark this) and the High and

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\* Rem. p. 82.

† See the Act of Recognition 1 Jac. c. 1.



*Noble Princess Queen Elizabeth his Wife, Eldest Daughter of King Edward IV. the said Lady Margaret being Eldest Sister of King Henry VIII. Father of the High and Mighty Princess of famous Memory, Elizabeth, late Queen of England.* Indeed, according to the *Remarker's Hypothesis*, King *James I.* Descent shou'd have been derived by the Lady *Margaret*, only from *Queen Elizabeth Eldest Daughter of King Edward IV.* by her Husband *Henry Earl of Richmond*; and the *Act* should not have said, that King *James* was Rightfully descended, of the Lady *Margaret Eldest Daughter of the most renowned King Henry VII. &c.* And therefore the *Remarker* agreeably to his *Hypothesis*, ventures to affirm that the *Act* doth not say so, whereas we see the *Act* doth as much say that he was Rightfully descended from *K. Henry VII.* as from *Queen Elizabeth* that King's Wife, since it expressly affirms that he was Rightfully descended of the *Body of the most Excellent Lady Margaret, Eldest Daughter of the most renowned King Henry VII. and the High and Noble Princess Queen Elizabeth his Wife.* And the *Remarker* may find in *Letbington* the *Scotch Secretary's Letter* to *Sir William Cecil*, that the *House of Scotland* insisted on their *Claim to the Crown of England*, as being

being the Eldest remaining Issue of King Henry VII. \*

I said, in Conclusion, against this imaginary Repeal of the 11. of Henry VII. by the 1 of James I. C. 1. that the greatest Lawyers in the Kingdom have declared since that *Act* of Recognition, that Allegiance is due to the King in Possession, and have supported their Opinions by the 11. of Henry VII. and therefore did not believe it Repeal'd by the 1. of James I. *And have not as good Lawyers declared the contrary?* saith the Remarker. † If they have, it would have been of Service to his Cause to have named some of them, as I have named Lawyers in the next Chapter, who have not believed this Statute of King Henry VII. Repeal'd by the Act of Recognition of King James I. But the Remarker had a good reason why he did not Name his several good Lawyers, and I Challenge him to Name one good Lawyer, who has maintain'd this Chimerical Repeal, which brings me to the Sixth Chapter.

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\* *Appendix to the 1 Volume of the History of the Reformation.*

† *Rem. p. 90.*

## CHAP. VI.

*A Defence of the Sixth Chapter, wherein this Account of our Constitution and Laws was supported by the Opinions and Authorities of some of the greatest Modern Lawyers, who Liv'd in the Reigns of Hereditary Kings, and, the Case of the Oaths resolved from this Account of our Legal Constitution.*

**H**AVING, as occasion serv'd, given the Opinions of great Lawyers and Judges of Elder Reigns, I proceeded in this Chapter to the Opinion of great Lawyers of later Reigns, whereby it appeared that the greatest Modern Lawyers Entertain'd the same Notion of our Constitution with the Antient; and have perfectly agreed with them in this great Point of Law, concerning the Authority of the King for the time being, and the Allegiance of the Subject, which is due to him. And here I produced the Opinions of such only as Flourish'd since the *Act of Recognition* of King *James I.* to shew also, by the way, that they who Liv'd since that Act, have had the same Notion of our Constitution in this matter, with those that Liv'd before it. And even amongst these, I produced the Opinions of such only as Liv'd under Hereditary



ditary Kings, as of the Lord Chancellor *Bacon*, and Lord Chief Justice *Coke*, in the Reign of King *James I.* of the Lord keeper *Bridgeman*, and Lord Chief Justice *Hale*, in the Reign of King *Charles II.* where there was no Temptation to Byass them on that Side of the Question, and as these great Lawyers deliver'd this for the Law of *England*, so, I said, no Lawyer of Note has ever contradicted them in those Reigns, where they might have done it with Safety and Advantage.

What saith the *Remarker* to this? Does he deny these were great Lawyers? That he does not. Does he deny these were their Words which I cited? Not that neither. Has he produc'd any Lawyers of Note that have contradicted them? Not one, except his Friend Mr. *Prin*, who need not be excepted out of that Number. What then doth the *Remarker* say. *Why*, he says, *he doth not think, whatever Mr. H. may do, Lawyers to be the best Casuists, and knows but too well, that what is Law in one Judges Time, is not so in another.* \* If that were true in some Points, yet I hope He'll allow, That to be Law, which has been held for such in all

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\* *Rem. p. 92.*

Judges Times, and which he cannot shew has been contradicted by any Judges at any Time, which is the Case of this Point of Law before us. I never said, *Lawyers were Universally the best Casuists*, I think Divines much better, only where the Case of Conscience depends, as it doth here, on the Case in *Law*, he that is the best Lawyer, is certainly the best Casuist.

One would wonder what this Writer has been doing, in making a Book of *Remarks*, chiefly upon the Opinion of Lawyers, and the Sense of our Laws, whilst he has so mean an Opinion of both. Whenever he is press'd Home, he crys out both against the Lawyers and the Laws. If I cite the common Laws of the Realm; they are *my Old Customs, Musty Year Books*, p. 8. and the *pretended Authorities of the Year Books*, p. 32. If I cite the Resolutions and Opinions of the greatest Judges and Lawyers: *Then Lawyers are not the best Casuists*, p. 92. *Lawyers are but private Men and fallible, and their Opinions are but private Opinions, and so of no Authority on either Side*, p. 90. If I cite Acts of Parliament; *they are Null and Void in themselves*, when they are against him, p. 87. It is no News, I suppose, to the Reader, that the *Natural Born Subject* has as little regard for the Laws. If it is, he may take this  
Passage

Passage for a Specimen of his regard to them, where this Writer arguing, in his way, on the Statute of *Henry VII.* saith, *there were always such Fools as thought an Act of Parliament a great matter on their Side.* \*

These Passages would give an impartial Reader a Suspicion, that, when Men are so much against the Lawyers and the Laws, they are a little Conscious to themselves, that the Lawyers and the Laws are against them; and that, whilst they are putting in their Exceptions to the Antient Customs of the Realm, to the Year Books, to the Opinions of Lawyers, to the Resolutions of Judges, and to Acts of Parliament, they would leave us no other way to Learn what is Law, but from their Hypothesis.

I need add nothing, to what is said in the View, concerning the Oaths; for since the Oaths are appointed by Law, and must therefore be interpreted according to Law, the Points in Law being once Establish'd, the Lawfulness of taking the Oaths follows as a Conclusion from it's Premisses.

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\* Letter p. 90.



## C H A P. VII.

*A Defence of the Seventh Chapter of the View, that our Laws, in this Point, are not contrary to the Holy Scriptures, and the Doctrine of our Church, but rather agreeable to both.*

THE Law-point, being thus Established, was, I said, a sufficient Direction for Conscience in matters of Civil Obedience, so long as there was nothing in it contrary to the Law of God. Here then the *Remarker*, and *Natural Born Subject* should have tried their Strength, and shewn that our Laws, in this Point, are contrary to God's Laws, This was the Place to have proved, what one of them does plainly, and I think both of them do suppose, that there is a certain Form of Civil Government and of Succession to it, of Divine Institution, and if they had done this, they had, I confess, effectually answered the *View*; since no Human Laws can Prescribe against a Divine Institution. In the mean time, whilst they only beg the Question, which they have not so much as attempted to prove here, and by what has been attempted elsewhere, I am satisfied, they never can prove, the Position of the *View* does stand, and is like to stand good,

good, that the Constitution, and our Obedience according to it, is sufficiently vindicated, if there is nothing in it contrary to the Law of God: for then the Laws of the Kingdom (which the Divine Law Commands us to Obey,) do, as I said, bind our Consciences as Subjects; and we are not only warranted, but obliged to pay our Obedience, as the Law directs.

This was sufficient for my purpose, that our Constitution, as I represented it, was not contrary to God's Law. However, I ventured a step farther, that our Laws, by requiring Obedience to the King in Possession, are agreeable to the Holy Scriptures, according to our Saviours Resolution of the Lawfulness of Subjection to the Roman Emperor *Tiberius*, because he was in Possession of the Government. This these Authors grant was our Saviours Resolution, but they are in the mean time, for giving other Reasons for the Subjection of the Jews to the Romans, *i. e.* they are for giving Reasons, which our Saviour did not give, and which therefore I need not consider; since our Lord did not here determine the Lawfulness of Subjection to the Roman Emperor, for any of those Reasons which they suppose, but for this one Reason which he gave, (as they themselves can-

cannot deny,) namely, that he was in Possession of the Government.

I cannot but, by the way, take notice, that this Command of our Blessed Saviour to the Jews, to be Subject to the Roman Monarchy, which was Elective, is an Invincible Argument against those, who maintain, that which is call'd, the Patriarchal Scheme of Government, to be of Divine Institution, and obligatory to all Mankind : For had it been so, our Saviour without doubt, when the Question was put to him about the Roman Government, and the Lawfulness of Submission to it, would have recall'd his Hearers to the Divine Original Institution, and told them, that *from the beginning it was not so*, that the Government under which they lived, was a Deviation from the Divine Institution : As when the Case of Divorce was put to him, notwithstanding the general Practice both of Jews and Gentiles, He reduced Mankind from the Deviation, to the Divine Original Institution of Marriage. But so far was our Blessed Saviour from delivering any such Doctrine, that He Commands Subjection to the Roman Emperor, and acknowledges his Authority was from God, *St. John 19. 11.*

I said, our Church had not given her Judgment by way of an Express decision of the Question, but that the Passage I cited from  
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our *Homilies*, favour'd our Side of the Question, and if the *Remarker*, and *Natural Born Subject* are not Conscious it does so, why doth the former throw in, not over decently, so many Abatements to the Authority of the \* *Homilies*, and the latter say *the Compilers of the Homilies might think Eleanor was Dead*? † As if those Learned Persons, were not as well acquainted with the History of that Age, as we, who are above a Century and half farther distant from it, than they were. *But they had the Pope, and the Dauphine of France in their View.* They might have them, and yet have King *John* and his Niece *Eleanor* in their View too. Let me ask the *Natural Born Subject*, whether, if he had Liv'd at that Time, he would have acknowledged himself a *Natural Subject* of King *John*, as the *Homilies* call *the English Men his Natural Subjects*? Let me ask both these Writers, whether they would have call'd King *John* *their Natural Lord, the King of England*? Whether they would have call'd the Oath, which the English Men took to him, *their Oath of Fidelity to their Natural Lord*? And whether they would, without any limitation or restraint

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\* *Remarks* p. 96, 97.

† *Letter* p. 102.

have condemned the Breach of it, as the Homilies do? If not, they do as good as confess, that these Passages do favour our side of the Question.

## C H A P. VIII.

*A Defence of the Eighth Chapter of the View, that our Laws, in this Point, are agreeable to the great End and Design of Government.*

**T**Hat Government was instituted for the publick good of the Community, and the security and welfare of all the Members of it, is what the *Remarker* grants p. 97. and what he adds, *yet Care was always taken primarily of the Prince*, is what I have asserted too in this Chapter, and \* elsewhere, and doth not in the least weaken the Consequence which I have drawn from this Principle; for if Government was instituted for the sake of all the Members of the Community, it will still follow, that after they have done their utinost to maintain their Prince in the Throne, and he happens to be

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\* See *View* at the foot of p. 98, &c. and p. 112.

dispossess'd, and cannot afford them any of the Benefits of Government, can neither defend Himself, Them, nor his Right to govern them, it is not reasonable, that they for whom Government was instituted, should lose all the Benefits of it, for the sake of him, for whom it was not, at least, not primarily instituted.

However this Principle, which the *Remarker* saith, *no Body questions, the Natural Born Subject* calls *the Thred-bare Cant of the Common Wealths-men.* \* The *Remarker* grants the Principle, but denies the necessary Consequence of it, which, it seems was easier for him to do, than to deny a Principle, which all, who have writ reasonably of Government, have ever allowed. But the *Natural Born Subject*, to avoid the Consequence, is hardy enough to deny the Principle, as he does in effect, when he calls it, *the Thred-bare Cant of the Common Wealths-men*, without any regard to the great Authorities, of the Church in her Homilies, of Bishop *Sanderson*, *Thomas Aquinas*, and Lord Chancellor *Fortescue*, which were produced for it. † And I desire him to take the Reverse of this Prin-

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\* Letter p. 103.

† View p. 97. 98.



ciple, and try what Profelytes he can make to it.

I took notice, that some had made an ill use of this Argument, to justify the Resistance of the Supreme Magistrate, when he does not, as they think, pursue the publick Good of the Community. But this is to abuse the Principle, and draw a false Consequence from it; and must therefore the *Natural Born Subject* draw another false Consequence, and deny the Principle it self to be True? Especially when he owns at the same Time, that, *I have guarded against this false Consequence*, \* he should have said, I have shewn † that the Laws, which require Submission, have guarded against it, by forbidding Resistance; and that the very Reason of Government has guarded against it; for if there is not a *Last Resort*, from which there is no Appeal, and against which there must be no Resistance, it is not Government, but Anarchy.

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\* Letter p. 103.

† View p. 99, 100.

## C H A P. IX.

*A Defence of the Tenth Chapter of the View, that our Laws in this Point are agreeable to the Practice of all Mankind, particularly of Gods own People, the Jews, and the Christians, of the earliest Ages.*

**I** Gave an Account of the behavior of the Jews, in their Subjection to the *Midianites*, *Moabites*, the Kings of *Egypt*, and after that successively to the *Babylonish*, *Persian*, *Grecian*, and *Roman* Empires. To which the Remarker says, the *Midianitish*, and *Moabitish* Princes, Ruled over them as Conquerors, not as Usurpers. \* The Natural Born Subject says, your last Chapter beginning at Page 100. tells us to Page 105. That the Jews submitted when they were Conquered, † (after I had proved it again Lawful for the Jews to submit to Princes, whom it was not Lawful for them to set up) he says, but what was this Case, it was only that of Conquest, when Strangers got the Rule over the Jews. || So that, after all that has been said on that Side, against the Title of Conquest, these

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\* Rem. p. 99.

† Letter p. 106.

|| Letter p. 97.

Two Authors fall in with it, and justify Submission on that Score.

But what does the *Natural Born Subject* mean, by saying, *though the Jews constantly submitted, they as constantly Revolted, whenever they could get the opportunity, as you may see in the History of the Judges, and of the Maccabees.* \* Had he truly represented their Case, he would gain little by it ; for if their Submission was justifiable, their Revolt was still inexcusable. But their Case is very falsely represented ; for the Jews did not Revolt under their greatest Oppressions, from those Strangers who got the Rule over them, but Liv'd Subject to them, till upon their Cry unto God, he particularly rais'd up and appointed them Deliverers, to whom he gave Authority to Rescue them, as is evident from the History of the *Judges*, to which he appeals. Thus *Ehud* † was particularly Authorised by God, to deliver them from the *Moabites* ; and *Gideon* || from the *Midianites*, which were the Two Instances I gave from the Book of *Judges*. In Bishop *Overall's* Convocation Book, it is said, *the Israelites had been Eighteen Years in Subjection to the Moabites, as they had been a*

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\* Letter p. 97.

† Judges 3. 15.

|| Judges 6. 11, 12, 13, 14, &c.

*little before Eight Years to the Aramites. They knew that it was not Lawful for them of themselves, and by their own Authority, to take Arms against the Kings, whose Subjects they were, though indeed they were Tyrants: And therefore they cried unto the Lord for Succor. Who, in Compassion of their Servitude and Miseries, appointed Othoniel to deliver them from the Aramites; and afterwards Ahud from the Moabites. In the Choice of which Two Judges it is to be observ'd, that the Scriptures do tell us that God raised them up, (and therefore it is most certain he did so,) and also that in such raising of them to their Places, he made them Saviours to his People, (as the Scriptures speak) giving them thereby Authority to Save and Redeem the Israelites, from the Tyrants that oppressed them; without both which Privileges, it had been altogether Unlawful for them to have done as they did. \* This was evident enough from those Places in the Judges, which I referr'd to, but the Natural Born Subject having, as I have good reason to believe, a high Esteem for the Convocation-Book: I thought a Citation from it might more Effectually convince him, of the Sense*

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\* Page 51. 52.



of those Places, and of his Error in Point of Fact, that the *Jews* constantly Revolted from the Strangers that got the Rule over them, when they could get an Opportunity; and in Point of Right, that they might Lawfully do so; for if he did not think so, he had no reason to mention their Revolt at all.

What he refers to in the *Maccabees*, is, I suppose, the Revolt from *Antiochus* the Great, but if he looks into the aforesaid *Convocation-Book*, \* he'll find a very different Account of that matter, from what is commonly given of it; and such an Account, as will do him no Service; but if he'll not be concluded by That, the Common Account, he knows, is as little to his Purpose.

In Answer to my Argument, that it was Lawful for the *Jews* to Submit to a Stranger, though it was not Lawful for them to set a Stranger to Rule over them, as appeared from the Law, *Deut.* 17. 15. The Remarker says, but if Mr. H. had Read on, he would have found, that they were to set over them him, whom the Lord their God should Choose. They had nothing to do to set up, or pull down Kings. † Nor did I say they had, and what he says, should have been added, is so

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\* Page 67.

† Remarker p. 87.

far from taking off the force of my Argument, that it adds to the force of it. For if they might not *in any Wise set a Stranger, i. e. a Heathen King over them, but one from among their Brethren*, and that *One whom the Lord their God should choose*; and yet notwithstanding this, they might live in subjection to *Strangers*, to Heathen Princes, who were not their Brethren, and whom the Lord their God did not choose; this undenyably proves, what is asserted, that it was lawful to submit to Princes, whom it was not lawful to set up.

The Remarker goes on, *but if God for their Wickedness set a Stranger over them, they were bound to submit to him, because it was his doing, as it was in setting the Babylonians, Grecians, Romans to rule over them, to chastise them for their Idolatry and Rebellion against him.* \* But how did God set the Romans, Grecians, &c. to rule over the Jews? Not by an exprefs Nomination, as he did Saul, David, &c. but by his Providence governing the Events of War. So indeed, and no otherwise, it was God's doing. And was this a sufficient reason for the Submission of the Jews? Yes, the Re-

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\* Ibid.

marker says, *they were bound to Submit to them, because it was God's doing.* And what is this more or less, than to resolve the Reason of Submission into Providence, and to set up a Providential Title? But this was *when God set Princes over the Jews for their Wickedness, to Chastise them for their Idolatry, and their Rebellion against him.* And had God thus by his Providence, set Princes over the *Jews*, to Rescue them from Idolatry, or to secure them from the danger of falling into it, would it not have been equally God's doing? And is not this the same Reason in General, which the *Remarker* gives, for their Submission: And as good a Reason in particular, when it is for their Safety, as when it is for their Chastisement? Both these Writers have particularly enumerated the several Answers that were made to *Dr. Sherlock's Case of Allegiance*, and have loudly call'd upon me for a Reply to them, though for what Reason I know not, unless it be, because I never medled with the Argument of *Providence*. How far, and in what manner the Divine Providence is concerned in Revolutions of Government, or how far it will, or will not justify Subjection, after the Revolution is passed, and the New Government Established, which was the great debate betwixt the Doctor, and his Answerers,

ers, and which, as my Design did not oblige me, I never entered upon, but set the Controversy entirely upon a New Foot, as I took Notice in the *View*. \* If they still think a Reply is necessary to those Answers, which were made to *the Case of Allegiance to Sovereign Powers*, the *Remarker*, who has here taken up that Hypothesis, is the only Person, that I know, who is obliged to give it.

I proceeded to shew, that the Behavior of the Primitive Christians, was agreeable to that of the *Jews*. To all which the *Remarker* only says, *that Mr. H. may Consult Bishop Usher's Power of the Prince, Dr. Hick's Jovian, Dr. Sherlock's Case of Resistance, Dr. Digg's Unlawfulness of Subjects taking Arms.* † And when the *Remarker* Consults them again, I believe he'll only find, that they have given numerous Examples of the Non-resistance of the Primitive Christians to the Emperors, and Kings, under which they Lived, but not one Example of Non-subjection to them, on any pretence of a defect in their Titles.

The *Natural Born Subject*, seems to think it some Advantage to his Cause, that I say

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\* Page 94.

† Rem. p. 100.



in the Three first Centuries, there is no other Instances of Dispossess'd Emperors claiming against Rivals, but that of the Two *Maximini*.

But since, in this Instance, I have proved a general Submission to the Emperors in Possession, and he has not pretended to prove the Christians were not comprehended in that general Submission. Nay since *Julius Capitolinus*, who Writes the History of the Two *Maximini*, excepts only *Capelianus* a Governor in *Africk*, and a few \* Cities, as adhering to these dispossessed Emperors, can we believe, if the Christians had done the same, he would not much rather have excepted them, who at that Time, and before that Time, made a great part of the Empire, fill'd *their Cities, their Senate, their Armies, and all Places*, as *Tertullian* says, † but *their Temples*? And therefore this, tho' the only Instance in this Period, is a very considerable one.

It is Observable that the Author of *Jovian*, is entirely on the Side of the Emperors in Possession. After he hath related *how the Army in Africk, upon bearing || of the barba-*

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\* *Paucae civitates fidem hosti publico servaverunt. Julii Capitolini Maximini Duo.*

† *Apologet. c. 37.*

|| *See Jovian p. 34. 35.*

*rous Pride and Cruelty of the Emperor Maximinus, brought the Purple to the Proconsul Gordianus and made him Emperor, and how the Senate at Rome out of hatred to Maximinus, Confirm'd the Choice of the African Souldiers, and declared Gordianus, and his Son Augusti, and denounced Maximinus, and his Son, Enemies to the Empire, he adds, at the same time Capelianus in Africk, Rebels against Gordian, that is, he Rebell'd when he took up Arms against the Emperor in Possession, on behalf of the Dispossest'd Emperor Maximinus, under whom Capelianus had been made Governor of the Mauritania's. For this is what Capelianus did, as is evident from \* Capitolinus, and what the Author of Jovian here calls Rebellion.*

In the Fourth, Fifth, and Sixth Centuries, I said, we had several Instances of Emperors Dispossest'd, and of the Christians becoming Subjects to New Emperors, whilst the Dispossest'd Emperors were Alive; as in

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\* *Sed Gordianus in Africa primum à Capitolino quodam agitari capit, cui Mauros regenti successorem dederat. Tunc Capelianus Victor pro Maximino, omnes Gordiani partium, motu partium in Africa, interemit, &c. Julii Capitolini, Maximini duo.*

the Case of *Licinius*, and *Constantine* in the Fourth ; of *Zeno*, and *Basiliscus* in the Fifth ; and of *Justinian*, and *Vitiges* in the Sixth Century.

What doth the *Natural Born Subject* mean, by saying, that these *Dispossess'd Emperors*, who had no Right but Possession, lost their Right with their Possession, \* when they had the same Right that any of their Predecessors had, or Successors either ? Or, by saying that these Cases are *Forreign to an Hereditary Monarchy*, † when we are not speaking of the Heirs or Sons of Emperors, but of *Dispossess'd Emperors* themselves ? And when he cannot say, if the Empire had been Hereditary, that their Heirs would have had better Pretensions after their Fathers Deaths, than these *Dispossess'd Emperors*, though *Elective only*, had during their Lives,

The *Remarker* also may Observe, as a further Answer to what he has advanced p. 87. that here are Instances of Emperors that did not submit, but claimed and made War after their Dispossession, which he might have observed also in several other Instances that I gave, where the *Jews* notwithstanding

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\* *Letter p. 106.*

† *Ibid.*

became Subjects to the Princes in Possession.

I said this had been the Practice of all Mankind, as well as of the *Jews* and Christians, upon Revolutions to submit to New Governments after they were Establish'd.

The *Remarker* saith, *if he should follow me in Revolutions that no way Concern us, he is Confident he should find them much more favourable to his Point, than mine.* \* But he must first follow me in those Revolutions, before he can have any Grounds for this Confidence, and when he shall do so, and take a survey of the Behaviour of all the Nations of the World, upon Revolutions both in former and later Ages, he'll see Reason to abate of his Confidence, and confess his Mistake. He'll find that upon these Events, the great Question has been, not, whether they shall Submit or no? But whether they shall obtain good Terms upon their Submission, and preserve their Antient Immunities and Privileges, under their New Masters? Let Subjects preserve an Inviolatible Fidelity to their Prince, and do their utmost to preserve him in his Throne, and then, if after they have run the greatest hazards for him,

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\* *Remarker* p. 88.



he happens to be Dispossess'd, neither their Prince, the World, nor their own Consciences can Reproach them, if they Endeavor to preserve the Community and themselves. And if some will be Singular in their Behavior, and instead of calmly considering the Nature and Ends of Government, and the Vicissitudes, to which it ever hath, and from the Lusts and Passions of Men, ever will be exposed, will frame Schemes of Government without Authority, either from Scripture, or the Laws of their Country, that are so far from promoting the great Ends of Government, that they would render That, which was Design'd for the Ease, Security, and Welfare of Mankind, to be a Snare, a Rack, and oftentimes Ruine to them, under those Vicissitudes which so frequently happen. If Men I say, will frame such Schemes, they may I think be modestly contented to Practice upon them themselves, and not rashly to Censure (as these Two Authors do) all who differ from them, which is almost all Mankind.

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CHAP.

## C H A P. X.

*Reflections on some of the Errors of the Natural Born Subject, and on his Opposition to the Remarker in some Points.*

**A**S these Two Authors Arguments and Errors are generally the same: So what has been said to the one, is commonly a Reply to the other, as well as to what is Material in the *Extract of Prin's Plea*: Yet because I have taken more Notice of the *Remarker*, than of the *N. B. Subject*, I shall bestow some Considerations upon him in Particular.

To complain of his Misrepresentations, or to take Notice of all his Mistakes in History, would be almost endless: I shall therefore only Animadvert on some of his Mistakes, about the Thirteen Kings, from the Conquest to *Henry VIII.* who I said came to the Throne without Hereditary Titles, And to make me mistaken in the Number, he takes it Exclusively of *William I.* and *Henry VII.* the first and last King in that Period. Whereas it is plain, I included them in this Number, otherwise there could not be Thirteen, who came to the Throne without, and Six, with Hereditary Titles, as I affirmed there did in that Period: A less hasty Writer would have given himself the Leisure to have counted Nineteen, rather than

than have made a Mistake, by Endeavouring to Charge his Adversary with one. He therefore begins with *William II.* and says.

*But Robert the Eldest Son of the Conqueror, contended with his Brother William II. for England, and at last came to a Compromise with him, to have it after his Death. \** And is it ever the less True, that *William II.* came to the Throne without an Hereditary Title, because there was a Compromise afterwards ; which Compromise this Author entirely Mistakes, when he says that by it, *Robert* was to have the Crown after *William's* Death : For by the Compromise *William's* own Son's, were to have it after his Death ; only in Case he should leave no Son, *Robert* was to succeed him in the Kingdom of *England* ; as *William* was to Succeed *Robert* in the Dukedom of *Normandy*, in Case he should Dye without a Son. Which is Evident from the Terms of the Compromise, as it is transmitted to us by the Arch-deacon of *Huntington*, † *Roger de Hoveden*, || and *Hemingford*. \*

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\* Letter Page 36.

† Rex fecit concordiam cum fratre suo. Statuerunt, si quis eorum moreretur prior altero sine Filio, quod alter fieret hæres illius, *Hen. Huntingdon Hist. L. VII. p. 213.*

|| Inter se constituerunt ut si Comes (*Sc. Robertus*) absque Filio legali matrimonio genito moreretur, hæres ejus fieret Rex (*Sc. Willielmus junior*) similique modo si Regi contigisset mori, hæres illius fieret Comes. *Rogeri de Hoveden Annal, Pars. I. p. 265.*

\* Hemingford ad An. 1090.

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The *Natural Born Subject* goes on, he made the like Compromise with his Brother Henry I. who Marry'd the Heiress of the Saxon Time, Edgar Atheling having before submitted. \* Not the like Compromise, as he has misrepresented it, but the like Compromise as I have related it, from our Ancient Historians: For by the Terms of it, Robert was not to Succeed Henry, as the *Natural Born Subject* Imagines, but his own Sons: But if he should Dye without a Son, then Robert was to Succeed him in England, as he, in the like Case, was to Succeed Robert in Normandy; as the Compromise is given us in the *Annals of Waverley*; † and by Henry of Huntington. ||

In these Three Lines he commits another great Mistake, when he says Henry I. Married the Heiress of the Saxon Line. He Married indeed Maud the Daughter of Margaret Queen of Scotland, Sister to Edgar Atheling. But for Maud's being the Heiress

\* Letter Ibid.

† Quod Consul unoquoque Anno tria mille, marcas argenti ab Anglia haberet, & qui diutius viveret foret hæres alterius, si alter sine recto hærede moreretur. *Anal Traver.* 1001.

|| Quod Robertus unoquoque Anno tria mille, marcarum argenti haberet ab Anglia, & qui diutius viveret, hæres alterius esset si alter absque Filio moreretur.



of the Saxon Line, I believe he has no better than *Almanack Authority*, for in the Chronological Tables of our Kings in some *Almanacks*, I have seen this Remark upon *Henry I. Marriage*, *The Saxon Line restored*. But had the *Natural Born Subject* known, as he easily might, that *Maud* \* had Four Brothers, *Edgar*, *Alexander*, *David*, and *Edward*, (of † whom *Edgar*, *Alexander*, and *David* were successively Kings of *Scotland*, and that the Race of the Scottish Kings were descended from † *David*,) he would never have made *Maud* an Heiress. For tho' he Streins his Hypothesis, I think, to make a Daughter an Heir to a Crown, yet he will I doubt not Confess his Mistake, in making *Maud* the *Heiress of the Saxon Line*, now he knows she had Four Brothers. Here I might ask this Author (since he sometimes doth not allow Cession, to transfer the Right to a Crown,) when the Right to the English Crown, was Extinguished in the Heirs of the *Saxon Line*, of the *House of Scotland*? And when our Kings of

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\* *Henricus majoris natu Anglia congregavit Londonia, & Regis Scotorum Malcolmi & Margarete Reginæ, Filiam Matildem Nomine, sororem etiam Regum, Edgari, Alexandri, & David in conjugem accepit. Roger de Hoveden, Page 268. b. 270. a. &c.*

† *Simon of Durham Names Six Brothers of Maud. Inter Decem Scriptores, p. 202.*

*England* upon his Principles commenced Rightful ? Or whether ever before King *James VI.* came to the Crown of *England* ? He proceeds.

*And Stephen the Usurper made the like Compromise with Maud the Empress, Heiress of Henry I. and with her Son Henry II. who accordingly did Succeed him.* \* Now this which he calls a *Like*, was a different Compromise from the Two former : For by the Terms of it, *Henry II.* was immediately to Succeed upon the Death of *Stephen*. It is another Mistake to say that *Stephen* made a Compromise with *Maud* : For he made the Compromise only with her Son *Henry*, and we cannot find that his Mother had any share in it. The Compromise it self is preserved in the Tower, and is Printed by *Mr. Rymer*. † In which there is no mention of any Resignation or Cession of *Maud*, nor is there any Plenipotentiary or Agent for her, or her Husband, the Duke of *Anjou*, amongst the Names of those that Sign'd that Agreement. How much soever *Dr. Brady*, in his Answer to the late very Learned Bishop of *Worcester*, was concerned to prove *Maud's* Cession, being not able to produce any Testimony of it,

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\* *Letter Ibid.*

† *Conventiones Fæderæ, Vol. i. p. 13.*

from

from any of our Historians, he is contented only to suppose it as probable. \* And therefore *Maud* having never Resign'd that we know of, either before, or after the Compromise, and being Alive, when her Son *Henry* came to the Throne, (and living to the Fourteenth Year of his Reign,) † he could not be said to Ascend it as the next Heir. I might lastly take Notice, that this Author as well as the *Remarker*, are Mistaken in the Terms of the Agreement betwixt *Stephen*, and *Henry II.* as they may themselves be convinced by the aforesaid Charter of || Agreement, and the Account that is given of it by *Henry of Huntington*, \* and *Roger de Hoveden*. †

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\* *An Inquiry into the Remarkable Instances of History and Parliament Records.* p. 27. 28.

† Anno 14 *Henrici* Regis obiit, *Matildis* Imperatrix Mater Ejus. *Annal. Waver*, 1167.

|| Sciatis quod Ego Rex *Stephanus*, *Henricum* ducem *Normannie* post me Successorem Regni *Angliæ*, & Hæredem eum jure Hæreditario constitui. & sic ei & Hæredibus suis, Regnum *Angliæ* donavi & Confirmavi, Conventiones, &c. p. 13.

\* Ipsum (*Henricum Sc.*) siquidem Rex in Filium suscepit adoptivum, & Hæredem regni Constituit. *Hen. Huntingdon*, p. 258.

† Pax *Angliæ* reddita est, pacificatis ad invicem Rege *Stephano*, & *Henrico* duce *Normannie*, quem Rex *Stephanus* adoptavit sibi in Filium & Constituit hæredem & Successorem Regni. *Hoveden*, p. 281.

*Arthur*



*Arthur Duke of Britanny, saith the Natural Born Subject, did Homage to his Uncle King John, and soon after Dyed. But did not Eleanor Survive her Brother, and King John too, and Live a close Prisoner to the Day of her Death? Which was in the Twenty Fifth Year of King Henry III. as we are assured by Matthew Paris, \* a Witness beyond exception: so that Henry III. as well as Henry II. (of whom only there could be any doubt of all these Thirteen Kings,) notwithstanding what this Author Imagines, did not come to the Throne as the next Heirs.*

Some may suspect that I have ransackt the *Natural Born Subject's* Book, for these Mistakes, to present them here at one View; but if they Please to turn to the latter End of the Thirty Sixth, and the beginning of the Thirty Seventh Page, they'll find them altogether, in the Order I have cited them, within the Compass of Twenty Two Lines: and I cannot but Observe, that whilst he is so much in the Dark, that he Stumbles almost at every Step he takes, he is yet triumphing over my imaginary Mistakes about

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\* Et Circa idem tempus Obiit *Alienora*, Filia *Galfridi* Comitis *Britannie*, in Clausura diuturni carceris sub arcta Custodia reservata, Anno 1241. *Matthew Paris*, p. 574.



these Thirteen Kings, and with a more than ordinary Air of Assurance says, *was the \* Thirteen then that Mr. Higden Speaks of, a Mistake of the Printer for Three, that it should have been? And I will take even these Three from him in the next Page, and leave his Summ Total a Naught.*

But to pursue him no farther in his Errors on this Head, and to Correct them at once, I'll set before the Reader a Table of these Thirteen Kings, in one Column; and of the Lineal Heirs, in another.

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\* Letter p. 38.

The

A TABLE Shewing,

<sup>1st.</sup> The Time when these 13 Kings came to the Throne. <sup>2ly.</sup> The Lineal Heirs that were Alive at that Time, and when they Dyed.

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*William I.* *Edgar Atheling* Heir of the  
*Anno 1066.* *Saxon Line*, survived both  
*Brompton* *William I. and William II.* and,  
as is Evident from the *Annals of*  
*Waverley*, was Alive in the 6  
Year of *H. I.* His Sister *Marga-*  
*ret*, who Married the King of  
*Scotland*, besides her Daughter  
*Maud* Married to *K. H. I.* had  
4 Sons, of which 3 were Succes-  
sively Kings of *Scotland*, *Edgar*,  
*Alexander*, and *David*, from  
whom descended the Race of  
the Kings of the *Scots*.

*Hoveden.*

*Malcolm IV.*

*William II.* *Robert Duke of* *William*  
*Anno 1088.* *Normandy* the El-  
*Brompton* *dest Son of Wm. I.* *Alexan. II.*  
who after a Com- *Alexan. III.*  
promise with *W. II.*

Henry I. and another with *John Baliol*  
*Anno 1100.* *Hen. I.* was upon *Rob. Bruce*  
 Brompton a New Breach, and *Dav. Bruce*  
 War, brought a *Ro. Stuart,*  
 Prisoner into *England,* where he *&c.*  
 Dyed, 1134. being  
 the 34<sup>th</sup>. Year of  
 his Brother *H. I.*  
*Reign. Ann. Waver.* *Sir George*  
*Prior Hagustald.* *Mackensy.*

*Stephen* *Maud* the Empress, Daughter  
*Anno 1135.* of *H. I.* who was not only before  
*W. Malmsb.* *Stephen,* but also before her own  
*Henry II.* Son *Hen. II.* in the Line, Dyed  
*Anno 1155.* in the Year 1167. which was  
 Brompton the 14<sup>th</sup>. Year of *Hen. II.* Reign.  
*Annals of Waverley.*

*John* *Arthur* the Son of *Geoffery.*  
*Anno 1199.* *Joh. Elder Brother* Dyed, 1203.  
*Mat. Paris.* the 4<sup>th</sup>. Year of *John's* Reign,  
*Henry III.* *Mat. Paris.* But his Sister *Elea-*  
*Anno 1216.* nor Dyed not till the Year 1241.  
*Mat. Paris* which was the 25. Year of *H. III.*  
*Matthew Paris.*

*Edward III.* *Edward II.* his Father was  
*Jan. 1326.* Murdered the *September* fol-  
*Henry de* lowing, *Circa festum beati*  
*Knyghton* *Mathei.* *Knyghton*  
*Richard*

*Henry IV.*      *Richard II.* Dyed the *Febru-*  
*Septem. 29.*      *ary* following.      *Stow*

1399.

*Stow*

*Edmund Mortimer* Earl of  
*March*, descended from *Lionel*  
Duke of *Clarence*, the 3<sup>d</sup>. Son  
of *Hen. III.* Dyed in 1425. being  
the 3<sup>d</sup>. Year. of *Henry VI.*

*Henry V.*

*Anno 1412.*

*Stow*

*Dugdale's Baronage*

*Henry VI.*

*Anno 1422.*

*Stow*

*Richard D. of York*, the Son  
of *Anne*, Sister to the E. of *March*,  
and of *Rich. E. of Camb.* Slain  
in the Battle of *Wakefield* 1460.  
being the 3<sup>9th</sup>. Year of *Hen. VI.*

*Stow*

*Richard III.*

*Anno 1483.*

*Sr. Thomas*

*More.*

*Edward V.* and his Brother  
the Sons of *Edward IV.* Mur-  
dered the first Year of *Richard III.*  
Reign.      *Sir Thomas More*

*Henry VII.*

*Anno 1485.*

*Ld. Bacon.*

*Elizab.* Daughter of *Edw. IV.*  
whom *Hen. VII.* Married in the  
first Year of his Reign. His Mo-  
ther the Countess of *Richmond*,  
who was then Alive, was before  
him, in the Line of *Lancaster.*

*Lord Bacon*



But of the *Natural Born Subjects* Errors of all kinds, (which from his *unmoved Primum Mobile*, to his Modest Exhortation in the End of his Book, are not a few) I shall take Notice only of one more.

When I was Speaking of the Submission of the *Jews* to the *Romans*? I added that the generality of the Nation were in Expectation, that a Prince of the Tribe of *Judah*, would shortly break the *Roman* Yoak, and Restore the Kingdom to *Israel*. Upon which the *N. B. Subject* says. *And that Prince did come, and was then among them. And he gave it up too, and commanded them to Submit to Tiberius, though he call'd himself the Son of David.* \*

After our Blessed Saviour had so expressly Disclaimed a Temporal Kingdom, and † so fully declared the Nature of his Kingdom, I wonder how this Author could fall into this Error, that *Christ had a Temporal Kingdom, which he gave up, and Commanded the Jews to Submit to Tiberius*. Christ, as God, is King of Kings, and Lord of all Creatures, but I am sure the *Natural Born Subject* will not say, that he gave up this Eternal Kingdom. Christ, as Man, has a Spiritual Kingdom, but

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\* *Letter* p. 98.

† *Mat.* 20. 25, &c. *Jo.* 18. 36.

neither will this Author say that he gave up this Kingdom, which he doth, and will retain, *till the End cometh, when he shall have deliver'd it up to God even the Father.* 1 Cor. 15.

But Christ, as Man, had no Temporal Kingdom, and utterly Disclaimed any; so that the Temporal Kingdom, which the *Natural Born Subject* says *he gave up*, he never had. And therefore at that Time, when he Comanded them to Submit to *Tiberius*, or at any other Time, He could not give up a Kingdom, which he never had.

This Error is severely censured in Bishop Overal's Convocation Book. 'Tis many ways very plain and evident that the Jews did expound all those Places of the Prophets, which do notably set forth the Spiritual Kingdom of our Saviour Christ, to be meant of a Temporal Kingdom, which he should erect upon Earth.--- There are some so much addicted in these Days unto the said erroneous Opinion of the Jews, as for the Advancement of the Glory of the Bishop of Rome, they will needs have Christ to have been here upon Earth a Temporal Monarch. Insomuch as some of them say in effect that neither Augustus Cæsar nor Tiberius his Successor were lawful Emperors from the time of Christs Birth, for above the Space of Thirty Years, until our Saviour had required the Jews to pay Tribute to Cæsar.---

But those are Men not to be feared, for to say the Truth of them, they are all in effect either gross and unlearned Canonists or else but new upstart Nerians, and with great Affinity with the Canonists; who meaning as it seemeth to outstrip the Jesuits, do labour as much to make the Pope a Temporal Monarch, as the Jesuits have done for his pretended spiritual Monarchy. \* I do not in the least suspect this Author of any Design of advancing these Papal Pretensions, nor is his Notion with respect to the *Temporal Kingdom*, which he saith Christ gave up, altogether the same with theirs; and yet, as far as he espouses the Notion of a Temporal Monarchy that our Saviour had, so far is he censured by this *Convocation-Book*. An unfortunate Writer! Who thinks a particular Scheme of Government is laid down in the Scriptures as a Law to Mankind; and yet in interpreting some Passages of Scripture with Relation to Government, has, we see, more than once fall'n into Errors, that stand Condemned in that very Book, for which, this is good reason to believe, he has the greatest deference.

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\* Page 110. 112, 113, 114.

Tho' these two Authors in many things agree so well, as if they wrote in Concert, yet we have seen, that they sometimes differ from one another, as well as contradict themselves: I shall take notice of a few more of their mutual Differences, and their self-Contradictions, and so take my Leave of them for this time.

They differ about the Reputation of the Book which they answer. The *Remarker* tells us, he made his Remarks on the View, *because he heard wherever he came, that it was applauded by Men of deep Reach, and profound Judgment, and such as made a Figure in their several Professions,* \* tho' by the way it seems all these Persons, of whom he gives so great a Character, were not able to distinguish *Utopia* from *England*. Or, if they were able, he is not: According to the *Title* of his Book, he, or they must be Visionaries.

But the *Natural Born Subject* differs from the *Remarker*, and says *neither Whig, nor Tory is pleas'd with the View.* † If so I am at a loss to know for what Reason he should give himself the Trouble to answer a Book that

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\* *Preface to the Remarks.*

† *Letter p. 4.*



no body was pleas'd with, unless it were to shew his great Skill in English History.

*There were sometimes Disputes about Titles of which, the Remarker says, the Populace were not competent Judges and in such Cases the Possessor was sworn to as rightful, and it was but reasonable, if the Right Heir could not be discover'd, or his Title cleared to the Satisfaction of the Subjects, who were to swear to him; for in this melior est Conditio Possidentis.* \* Again speaking of the Duke of York's Title, *what would Mr. H. have more? Here the Great Men (who were then the proper Judges) declare his Right and Title.* † If the Populace were never competent Judges about *disputed Titles*, how come they to be so at this time? And if the Great Men were the Judges heretofore, why are they not so now, and *what would the Remarker have more?* Why is he not concluded by their Judgment now? Both these Authors sometimes, but the Remarker very often to get rid of an Argument gives up his own Cause. But the *Natural Born Subject* denys the great Men are Judges, and says, *in a Competition for the Crown, there is nothing else to be done*

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\* Remarks p. 15.

† Ibid p. 26.

*but every Man to satisfy his own Conscience the best he can, as to the Right of the Competitors. But as to any judicial Determination, there can be none upon Earth; \* He is here diametrically opposite to the Remarker. But the great Error of this Author is, that he doth not consider Men as Members of Civil Society, who in civil Matters in order to the publick Peace of it, must be concluded by a Publick Judgment; but looks upon them as so many Independent Individuals, I may rather say, as so many Independent Governors, whilst he censures not only the Judgment of other Men, but the Publick Judgment too, when it differs from his own: But I am not here to dispute, but only to shew how he differs from the Remarker.*

There is nothing perplexes these two Authors more, than Oaths, Cessions, and Submissions, about which they sometimes differ from one another, and sometimes contradict themselves; tho' in the main they agree in their Management, making Submissions, Cessions, and Oaths, to give up, or not to give up a Right or Claim, as it serves their present Argument. Thus the Submission of the Jews, and the Submission and Oaths of

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\* Letter p. 74. 75.

the Senate, and People of *Rome*, shall give up their Right ; but the long Submission Oaths, &c. of the House of *York* shall not abate their Right, nor Prejudice their Claim as the *Remarker* says, p. 26. And the *Natural Born Subject* says, *That Age will be a Precedent of the most inflexible Loyalty, which the Usurpation for sixty Years Continuance together, nor Success, nor Prescription, nor Acts of Parliament, no nor the Submission or Resignation of those who had the Right could abate, they saw these were not free and voluntary, and therefore would lay no Strefs upon them* ; p. 70, 71. And yet at another time to get rid of the Argument from the Homilies, and to favour King *John's* Title, he says, *Arthur was dead and his Sister Eleanor a Prisoner in King John's Hand, and her Life at his Mercy every Hour ; so that there was no Claim made by her, or for her* p. 102. The Heirs of the House of *York* could never quit their Claim by sixty Years Subjection, accepting Commissions, or repeated Oaths, tho' at perfect Liberty ; (For by this time the *Natural Born Subject* may be sensible, that he had no more reason to put them under Constraint, than the *Remarker* had to put them in Duress.) And yet here the bare Non-claim of *Eleanor*, who was a Prisoner, shall serve the turn. At another time *Edgar Atheling*, who, I suppose, even he will  
not



not say, was more free than the Heirs of the House of *Tork*, shall by Submission and an Oath of Fidelity transfer his Right to *William* the Conqueror. *William the Conqueror*, says the *Natural Born Subject*, obtain'd a Right, because *Edgar Atheling* the true Heir submitted and swore Fidelity to him, p. 38, 39. Is not this *δελών τῇ ὑποθέσει* to have a greater regard to an Hypothesis, than Truth. And here, by the way, I might observe, how he passes by *Edgar Atheling's* Sister, *Margaret* Queen of *Scotland*, who was then truly the Heiress of the *Saxon* Line, tho' at another time, we see, he can make her Daughter *Maud* to be the Heiress of the *Saxon* Line, who was no Heiress at all, having Four Brothers alive.

Whether the Hereditary Descent of the Crown is Limitable by Act of Parliament, is a Question, upon which the Writers of that side are as much divided: But to confine my self chiefly to those with whom I have been engaged in this Controversy. The *Objector* holds the Descent of the Crown is limitable by Act of Parliament. The *Natural Born Subject*, and *Remarker* both deny it. The *Natural Born Subject* denies it; because he believes the Right of Succession by Primogeniture, is of Divine Institution, and a Law of the whole Earth. If the *Remarker* is of  
the



the same Opinion, (which he doth not plainly declare) he differs very much from the Learned Author, whose Book \* he hath so often recommended to me, who in his *Preface* goes no higher than human Authority, or a fundamental Law of the Monarchy, which he supposes has fix'd the Succession. He saw there were no grounds in the Holy Scriptures to fix the Succession on divine Institution or Law. On the other hand, the *Natural Born Subject* is, I believe, convinced, that it cannot be unalterably fix'd by human Law, since he appears to be of my Lord Bacon's Opinion, || which I think is very true, that the Supreme Power may dissolve, but cannot bind it self, so that I have thus far both these Authors with me against each other: The Author of *Jovian* agreeing with me against the *Natural Born Subject*, that the Succession to the Crown is not establish'd by a Divine Law; and the *Natural Born Subject* agreeing with me against that Author, that the Succession cannot be unalterably fix'd by human Law.

But to satisfy the *Natural Born Subject* and the *Remarker*, that I have not mistaken that Author's Sense in his *Preface*, they may

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\* Jovian

|| Letter p. 18.

find in the Book it self (which I desire the *Natural Born Subject* especially to observe) that he is so far from making Succession to a Crown by Primogeniture to be of Divine Right, that he denies Monarchy it self to be of divine Right, exclusive of other forms of Government. For after he has run thro' other Forms of Government, whether *Aristocracys*, or *Democracy's*, as the Government of *Sparta*, of *Venice*, and of the Cantons of *Switzerland*, and observed wherein the Sovereignty was, and is respectively lodged in each of them, he says, *I was the more willing to make this Observation, that when I speak of Sovereign Princes, I may not be maliciously traduced, as if I spoke of them exclusively of other Sovereigns, as if Monarchy were of sole Divine Right. For want of this Distinction, other Authors have had this invidious Imputation laid upon them.* \*

But if the *Remarker* shall say, he Agrees with the Author of *Jovian*, he must then at the same Time Confess, that he is directly Opposite to his Partner in this Controversy, the *Natural Born Subject*.

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\* *Jovian* 240, 241.

'Tis True, that amidst all these Differences, they at this Time happen to agree (tho' some of them not very consistently with themselves) in one Conclusion, deduced from Premises, as different as their Principles; but had they lived in some of the Reigns, we have before discoursed of, and pursued their different Principles, they would have form'd (for they would not have found any) different Parties, and been some of them Jurors, and others Non-Jurors then.

As I have hitherto taken no notice of the hard Words, Angry Invectives, and rash and uncharitable Censures, which make so many Pages of both these Answers; so I shal always neglect them; being perfectly satisfied, that there was nothing provoking in the *View*, which, whatever it wanted, did not want Temper; and I hope I have made no Retaliation in this *Defence*: For to forgive the Authors, and not to imitate them, is the best use that can be made of that way of Writing.

F I N I S,

## APPENDIX.

## Number. I.

*Anno XIV. Edwardi Quarti.*

**I***Tem*, Our said Sovereigne Lord the King remembring that it was Ordained, Enacted, and Eſtabliſhed, by Authoritie of the Parliament holden at *Westminster*, the Second Day of *May*, in the Ninth Yeere of the Reigne of the Noble King *Henry V.* late in Deed and not of Right, King of this Noble Realme of *England*, as heereafter followeth. \* *Item*, whereas the taking of Affises generally, hath long ceaſed throughout this Realme of *England*, becauſe of a Statute and Ordinance made by our ſaid Sovereigne Lord the King, at his Second Paſſage towards the Partes of *Normandie*, and by his Counſell: Our ſaid Sovereigne Lord conſidering the great Diſeaſes and Damages, which divers of his Liege People have had and ſuſtained by the ſame ceaſing, hath ſtraightly Commanded, and Commandeth, that his Juſtices ſhall hold the Affises through the Realme of *England*, in

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\* *Here begins the Recital of Henry the Vth's Statute.*

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the manner used and accustomed. And to Eschew the disherifons of the same Persons, which now be passed and shall passe in this Voiage Royall of the King, (which God Speed,) and also of the Persons which be abiding in the Service of our Sovereigne Lord the King, in the Partes of *Normandie* and of *France*, it is ordained and provided, that in every Protection with the Clause of *Volumus* to be made for every of the same Persons, there shall be in the Clause of the Exception of the same contained Omission of these Words, *assise nove disscifine*. And that all Protections be allowable for them, and every of them, in all the Counties of our Sovereigne Lord the King, in any Place where such Protection is cast forth for any such Person, in all the Pleas of Assises as well of *No. dis.* as of *Fresh Force*, without any difficulty. *Provided always*, that the Judgements to bee given from henceforth in such Assises Arraigned or to be Arraigned, shall not be prejudicial to any of the said Persons so abiding in the King's Noble Service beyond the Sea, as is aforesaid, which hath any thing in Reversion or Remainder in such Lands or Tenements, whereof such Assises be or shall be Arraigned, if they that have in Reversion or Remainder of such Lands or Tenements be not Named in the same Assises, but that they bee against them

Voyde.

Voyde. And this Ordinance shall endure till the Parliament, which shall be next holden after the next coming againe of our Sovereaigne Lord the King into this Realme of *England*. And if this Ordinance touching the said Persons, abiding in the King's Service beyond the Sea, and also touching the said Persons, which have passed and shall passe in the said Voyage, be not sufficient for the Ease and Surety of them, it is accorded and assented, that the Lords of the King's Council for the time being, shall have full Power by Authority of this present Parliament, to set, ordaine and provide sufficient Remedy for the Ease and Suretie of all the said Persons and every of them, as to the said Lords shall seeme Availeable and Expedient in the case, after their good Advise and Discretion. \* Our Sovereigne Lord the King will and hath Ordained, Enacted, and Established, by the Advise and Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by Authority of the same, that the same Order and the same Lawe, comprised in the said Statute and Ordinance, shall be now observed and kept, and shall be as Availeable for all manner of Per-

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\* *Here ends the Recital of Henry the Vth Statute.*

sons, which now shall passe over the Sea with our Sovereigne Lord the King in this Voyage Royall, and there shall abide in his said Noble Service as they were, for such Persons which did passe over the Sea with the said late King, and there did abide in his Noble Service. And that all such Persons, which now shall passe over the Sea with our said Sovereigne Lord the King, shall have and Enjoy in every pointe all manner of Advantages, as the said Persons so passing over the Sea with the said late King, had, should have, and might have had by reason of the said Statute. This Act and Ordinance to endure till the next Parliament, which shall be first holden after the next coming of our Sovereigne Lord the King into *England*.

*Rastall's Collections Vol. i. p. 316.*

## Number II.

*The Oath which Richard Duke of York took, to be True, Faithful, and Obedient Subject, to King Henry the Sixth, at St. Pauls Cross, in the Presence of the King and most of his Nobility, in 1452. being the 30th. Year of Henry the Sixths Reign.*

**I** Richard Duke of York, Confess and Beknow, that I am, and ought to be, humble



humble Subject, and Liege-Man, to you my Sovereign Lord King *Henry VI.* and owe therefore to bear you Faith and Truth, as to my Sovereign Liege Lord, and shall do all Days unto my Lives End, and shall not at any Time Will or Assent, that any thing be Attempted or done against your most Noble Person, but wheresoever I shall have Knowledge of any such thing imagined or proposed, I shall with all Speed and Diligence possible to me, make that your Highness shall have Knowledge thereof, and over that, do all that shall be possible to me, to the withstanding and let thereof, to the uttermost of my Life. I shall not any thing take upon me against your Royal Estate; or Obeysance that is due thereto, nor suffer any other Man to do, as far forth as shall be in my Power to let it: And also shall come at your Commandement whensoever I shall be call'd by the same, in Humble and Obeysant Wife, but if I be letted by any Sicknes, or Impotence of my Person, or by such other Cause as shall be thought by you my Sovereigne Lord Reasonable, I shall never hereafter take upon me to gather any Rowt, or to make any Assembly of your People, without your Commandment or License, or in my Lawful Defence, I shall report me at all Times to your Highness, and if the Case require, to my



Peers, nor any thing Attempt against any of your Subjects, of what Estate, Degree or Condition that they be. But whensoever I find my self Wronged and Agrieved, I shall sue Humbly for Remedy to your Highness, and proceede after the Course of your Lawes and in none otherwise, saving in my own Lawfull Defence in manner abovesaid, and otherwise have to your Highness, as an Humble and True Subject ought to have to his Sovereigne Lord. All these things abovesaid, I Promise you truly to Observe and Keep, by the Holy Evangelists contained in the Book that I lay my Hand here upon, and by the Holy Cross I here Touch, and by the Blessed Sacrament of the Lords Body, that I shall now with his Mercy Receive. And over, I agree me, and will, that if I any Time hereafter, as by the Grace of our Lord God I never shall, any thing Attempt by way of Feate, or otherwise against your Royall Majestie, & the Obeysance that I owe thereto, or any thing take upon me otherwise than is above expressed, I from that Time forth be unabled held, and taken as an untrue and openly foresworn Man, and unable to all manner of Worship, Estate and Degree, be it such as I now occupy, or any other that might in any Wise grow unto me hereafter. And this I have heere promised and Sworn,

pro-

proceeded of mine own desire and free Volunte,  
and by no constraining or Coaction. In Wit-  
ness of all these things above Written, I  
Richard Duke of York above Writ, Subscribe  
with my own Hand and Seal.

*This Oath he also took at Westminster,  
and at Coventrie at sundry Times in the 31<sup>st</sup>  
Year of K. Henry VI. Stow. Page 396.*

### Number III.

*The Oath which Richard Duke of York took,  
upon the Agreement in 1460. in the 39<sup>th</sup>.  
Year of King Henry the Sixth.*

**I**N the Name of God Amen, I Richard  
Duke of York, Promise and Swear by  
the Faith and Truth, that I owe to Almighty  
God, that I shall never Consent, Procure or  
Stir, directly or indirectly, in Privy or apart,  
neither (as much as in me is) shall suffer  
to be done, consented, procured or stirred  
any thing, that may sound to the Abridge-  
ment of the Natural Life of King Henry VI.  
or to the hurt or diminishing of his Reign,  
or Dignity Royal by Violence, or any other-  
wise against his Freedom or Liberty, but if  
any Person or Persons, would do or pre-  
sume any thing to the contrary, I shall with

all my Might and Power withstand it, and make it to be withstood, as far as my Power will stretch thereunto. So help me God and his Holy Evangelists.

*Stow P. 410.*

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Number IV.

*Anno Undecimo Henrici Septimi.*

C H A P. I.

**T**HE King our Sovereign Lord calling to his Remembrance the Duty of Allegiance of his Subjects of this Realm, and that they by Reason of the same, are bound to serve their Prince and Sovereign Lord for the Time being, in his Wars, for the Defence of him and the Land, against every Rebellion, Power, and Might, reared against him, and with him to enter and abide in Service of Battel if Case so require; and that for the same Service, what Fortune ever fall by Chance in the same Battel, against the Mind and Will of the Prince, (as in this Land sometime passed hath been seen) that it is not Reasonable, but against all Laws, Reason, and good Conscience, that the said Subjects going with their Sovereign Lord in Wars,



Wars, attending upon him in his Person, or being in other Places by his Commandement within this Land, or without, any thing should lose or forfeit for doing their True Duty and Service of Allegiance. It be therefore Ordained, Enacted, and Established by the King our Sovereign Lord, and by the Advice and Assent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by Authority of the same, that from henceforth no manner of Person or Persons, whatsoever he or they be, that attend upon the King and Sovereign Lord of this Land for the Time being, in his Person, and do him True and Faithful Service of Allegiance in the same, or be in other Places by his Commandement in his Wars, within this Land or without: That for the said Deed and True Duty of Allegiance, he or they be in no wise Convict or Attaint of High Treason, nor of other Offences for that Cause, by Act of Parliament or otherwise by any Process of Law, whereby he or any of them, shall Lose or Forfeit Life, Lands, Tenements, Rents, Possessions, Hereditaments, Goods, Chattels or any other things, but to be for that Deed and Service utterly discharged of any Trouble Vexation or Loss. And if any Act or Acts or other Process of the Law, here-



hereafter thereupon for the same happen to be made contrary to this Ordinance, that Act or Acts or other Process of the Law whatsoever they shall be, stand and be utterly void. Provided alway, that no Person or Persons shall take any Benefit or Advantage by this Act, which shall hereafter decline from his or their said Allegiance.

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Number V.

*Anno Decimo tertio Regina Elizabethæ c. I.*

*An Act whereby certain Offences be made  
Treason.*

**A**ND be it further enacted that if any Person shall any ways hold and affirm or maintain that the Common Laws of this Realm, not altered by Parliament, ought not to direct the Right of the Crown of *England*; or that our said Sovereign Lady *Elizabeth* the Queen's Majesty that now is, with and by the Authority of the Parliament of *England*, is not able to make Laws and Statutes of sufficient Force and Validity to limit and bind the Crown of this Realm, and the Descent, Limitation, Inheritance, and Government thereof. Every such Person

son so holding, affirming or maintaining during the Life of the Queen's Majesty shall be judged a high Traitor, and suffer or forfeit as in Cases of High Treason is accustomed ; and every Person so holding, affirming or maintaining after the Decease of our said Sovereign Lady, shall forfeit all his Goods and Chattels.

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### Number VI.

*A Citation out of a Letter of Lethington the Secretary of Scotland to Sir William Cecil the Queen of England's Secretary.*

**N**OW let us examine the Matter and Circumstances how King *Henry VIII.* was by Statute enabled to dispose the Crown. There is a Form in two sorts prescribed him which he may not transgress, that is to say, either by his Letters Patents sealed with his Great Seal, or by his last Will signed with his own Hand : For in this extraordinary Case he was held to an ordinary and precise Form ; which being not observed, the Letters Patents, or Will cannot work the Intent or Effect supposed. And to disprove that the Will was signed with his own Hand ; you know that long before his  
Death

Death he never used his own Signing with his own Hand; and in the time of his Sickness, being divers times pressed to put his Hand to the Will written, he refused to do it. And it seemed God would not suffer him to proceed in an Act so injurious and prejudicial to the Right Heir of the Crown, being his Neice. Then his Death approaching, some as well known to you as to me, caused *William Clark*, sometimes Servant to *Thomas Heneage*, to sign the supposed Will with a Stamp (for otherwise signed it was never) and yet notwithstanding some respecting more the Satisfaction of their Ambition, and others their private than just and upright Dealing, procured divers honest Gentlemen, attending in several Rooms about the King's Person, to testify with their Hand-writings the Contents of the said pretended Will, furnished to be signed with the King's own Hand. To prove this dissembled and forged signed Testament, I do refer to such Trials as be yet left. First; the Attestation of the late Lord *Pagel* published in the Parliament in Queen *Mary's* Time for the Restitution of the Duke of *Norfolk*. Next, I pray you on my Sovereigns behalf, that the Depositions may be taken in this Matter of the Marquess of *Winchester*, Lord Treasurer of *England*, the  
Mar-



Marquess of Northampton, the Earl of Pembroke, Sir William Petre, then one of King Henry's Secretaries, Sir Henry Nevell, Sir Maurice Barkley, Doctor Butts, Edmond Harman Baker, John Osborn Groom of the Chamber, Sir Anthony Dennis, if he be living, Terris the Chirurgion, and such as have heard David Vincent and others speak in this Case; and that their Attestations may be enrolled in the Chancery, and the Arches, *in perpetuam rei memoriam.*

*Collection of Records at the End of the  
1 Vol. of the History of the Reformation.*

Page 269.

### Number VII.

*A Citation out of Sir Thomas Craig's Book of the Succession in Answer to Doleman alias Parsons the Jesuit, who endeavoured to set up King Henry VIIIth's Will. p. 334, 345.*

**T**His good Man (*meaning Doleman*) like himself always adds that the Seal or Stamp was enough in this Affair, so that with him it is sufficient to answer the Intention of the Parliament, says he, that his



his last Will had his Seal (his *Stamp* \*) put to it, tho' at the same time there is no mention in the said Statutes of the Seal (*Stamp*) to his Testament, but of his Subscription, and in an Affair of that Importance as that last Will was, that it should be subscribed by the King's Hand was the least that might be, seeing the Seal (*Stamp*) could be put to it by his *Amanuensis* even after his Death. Yet I shall say nothing of those two Acts or Statutes, tho' they exceed the Condition and Power of Mortals, nor how such Power could be given to any Man, whatever his Dignity be, in an Hereditary Kingdom; seeing at that time many things may happen which may disturb his Judgment; yet tho' this might be dispenced with in so great a Prince; who could ever endure than an Affair of the greatest consequence should be entrusted to his *Amanuensis*, and to his report that he was commanded by the King to set the Seal (*Stamp*) to it, or that such Power could be given to him as that by his setting the Seal (*Stamp*) to it, the true and lawful Succession of the Kingdom should be taken away: Who will believe it? Certain-

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\* I have taken the Liberty after the Word (*Seal*) to add (*Stamp*) for so it ought to have been expressed.

ly the House of *Suffolk* at this rate, should they get the Kingdom, could not owe it to the Right of Succession, but to *Clark*, one of the lowest sort of the People, who acknowledged openly before *Queen Mary* and her *Privy Council*, and also before the *Parliament*, that he put the Seal (*Stamp*) to it, after *King Henry* had lost the Use of his Reason, or was past Sense and Memory, and who also was forgiven for that Crime, and obtain'd the Queen's Pardon upon his Confession. For who can be better believed in *Crimine falsi*, that is, in Forgery, than the Author and Forget himself?

But *Doleman* says, that the two Acts of Parliament cannot in reason be eluded or overthrown by the Testimony of that *Clark*, or of others, concerning himself or his own Fact, wherein they say that the King's Memory was gone when the Stamp was put to the Testament. But the Forgery in putting the Seal (*Stamp*) to that Paper may be evidently enough made appear even from those two Acts of Parliament themselves remaining in their Force. And it is quite another thing, the King could have done such a thing, and the King did it. The King also could by virtue of those two Acts have nominated his Successors: But who will say that he ever did name his Successors? Moreover had that Seal (*Stamp*) been put to the Paper by his Command, yet even that did not come up to the Intention and Purport of those Two Statutes. For as the Bishop of *Ross* observes and all the Lawyers \* if the Form appointed be omit-

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\* *Si Forma a lege tradita sit omissa, et totus actus vitatur.*  
ted,

the whole Proceeding is nulled by that Omission. \* Especially when that Form that is prescribed for any reason ought to be observed, † even after the reason ceases, for which it was introduced. Wherefore unless the King had observed and kept himself, to that Form in making his last Will, which was appointed in those two last Acts, the transferring of the Kingdom from the true Heir could never have been established or confirm'd by such his Will. But seeing this reason hath been fully explained both by the Bishop of *Ross*, and by my self, I forbear to say any more of it here.

But our Author says, that this last Will of King *Henry*, which was not only authorized by Two Acts of Parliament, but enrolled in the Chancery, ought not to be overthrown by one or two Witnesses. But it's evidently false that that Will was Authorized by two Parliaments, tho' the Power of making such a Will was granted to that King by those Parliaments, yet that Will was never Ratified. For what was done a long time before, cannot ratify what is done after, especially if it be done in a different Form. This Man is an ill Lawyer, a worse Historian, but the worst of all Divines, who thus perverts Law, History, and the Sacred Scriptures.

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\* *Bald. in L. non dubium C. de Legibus.*

† *L. Si fundus de rebus eorum, qui sub tutela & cura sunt, non alienandis.*



## ERRATA

**P**Age 4. l. 21. for by r. with, p. 27. l. 20. for Cattels r. Chat-  
tels p. 4. l. 1. for no r. not, p. 62. l. 8. for Cannon r. Com-  
mon, p. 66. l. 24. for satutes r. statutes, p. 88. l. 8. after do r.  
not, p. 92. l. 10. dele that he, p. 134. l. 12. for Opinion r. Opi-  
nions, p. p. 143. l. 17. dele again, p. 161. l. 20. for altogether r.  
all together, p. 168. l. penult. for this r. there.

Bishop Fisher's Letter p. 10. is in Cotton Library, and  
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